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APPENDIX

Volume II

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

No. 78-627

DAYTON BOARD OF EDUCATION,
WILLIAM E. GOODWIN,
JOSEPHINE GROFF and
JAMES D. HART,

Petitioners,

v.

MARK BRINKMAN,
PATTY BRINKMAN, and
PHILLIP BRINKMAN,
By Their Mother and Next Friend,
Donna Brinkman, et al.,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

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Petition For Certiorari Filed October 13, 1978
Certiorari Granted January 8, 1979

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V. TESTIMONY OF WILLIAM MARQUARDT.

[R. I. 1721-1722, Vol. 17]. Q. Would you state your name, please?

A. Willard Marquardt.

Q. And are you associated with the Dayton Board of Education?

A. Yes, sir.

Q. In what position, Mr. Marquardt?

A. Director of Athletics and Physical Education.

Q. How long have you held that position?

A. I think this is my fourteenth year.

Q. And just what does this position involve?

A Well, it involves a great deal of all the athletic scheduling and hiring of officials and trying to get sites to play ballgames and physical education and health and safety quite a lot.

Q. Are you involved in any type of city league that is in existence in the City of Dayton?

A. Yes. Our office makes all the league schedules for all sports.

Q. What teams comprise the City League?

A. We have eleven of them. Do you want me to name them?

Q. Are they the high schools in the City of Dayton?

A. Yes, they are all eleven high schools.

Q. Now, have you made a search of the minutes of the Athletic Board to determine when Dunbar became a member of the Dayton City League?

A. Yes, sir. Dunbar was a full member of the Dayton City League in 1948.

Q. And since you have been Athletic Director of the Dayton Board of Education, has Dunbar participated in the City League with all other high school teams in this league?

A. Yes, sir, they have.

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[R. I. 1736, Vol. 17] Q. Do you get into the question of whether or not other teams – the question of whether or not there are other teams that the teams may schedule besides the City League games?

A. No, sir. Each school has a faculty manager of athletics and they are responsible for making up the complete schedule of non-league games. They can make them either at their school or away, whichever they desire.

Q. And in football and basketball there has been this innercity competition between all the eleven teams in the City League, is that correct?

A. Yes, sir.

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W. TESTIMONY OF NELSON T. WHITEMAN.

[R. I. 1737, Vol. 17] Q. Would you state your name, please?

A. Nelson Whiteman.

Q. And are you presently associated with the Dayton Board of Education?

A. Yes, sir.

Q. And what position do you hold?

A. Principal of Patterson High School.

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[R. I. 1739-1747, Vol. 17] Q. How many classes or grades were involved in this school at that time?

A. At that time, three years, three grade levels; tenth, eleventh, and twelfth.

Q. And how long was Patterson Cooperative a three-grade school?

A. Unitil 1968.

Q. And what three grades would that have been?

A. Ten, eleven, and twelve.

Q. Now, you indicated that it was a vocational type school?

A. Right.

Q. How were the students recruited for attendance – first of all, was this an all citywide school?

A. Yes, sir.

Q. How were the students selected or recruited during the period of time that you were there, from 1953 up until the spring of 1967?

A. We had a team of coordinators and counselors that visited the other high schools in the city and put on an assembly program for the ninth grade students in those schools to explain to them the opportunities that were available at Patterson Cooperative High School.

Q. And did you visit or did the teams visit all of the high schools?

A. Yes, sir.

Q. And were you a part of this team?

A. Yes, sir.

Q. What high schools did you visit?

A. Oh, I visited Fairview and Belmont, Wilbur Wright, Stivers, Roth, Roosevelt and Dunbar.

Q. Now, during the period of time that you were in the Patterson Cooperative High School, from 1953 through the time it became a four-year high school, were there any spaces available for any additional students in this school?

A. Yes, sir.

Q. Now, during this period of time, up until it became a four-year high school, were there any efforts made by the staff at Patterson to obtain more black students at Patterson?

A. Yes. In one incident I can recall particularly in February of 1965, we had a special luncheon for the principals and guidance counselors of the black schools in Dayton to try to enlist their help, to encourage more black students to attend Patterson.

Q. And this would have been when, in '65 did you say?

A. February of 1965.

Q. Now, Patterson became a four-year high school in 1968?

A. Right.

Q. At this time your recruiting would have taken place, I take it, in the spring of 1967, when applications would have been received?

A. No, your applications would have been received in the spring of 1968 for the fall of 1968.

Q. All right. Could you tell us what were the considerations tl at went into or how you decided to select the freshman students that were taken into the student body in the fall of 1968?

A. Well, I'm not sure I know exactly what you are asking me.

Q. All right. Let me restate the question.

A. Okay.

Q. Your procedure before was to visit the high schools.

A. Correct.

Q. Now, as I understand it – well, let's go back to 1968.

On the applications, what considerations – when you became a four-year high school, were there an increase in applications at that time?

A. Yes.

Q. What were the number of increases?

A. Well, when we were a three-year high school we never had as many as five hundred applications for any one year.

We were going to shoot for five hundred applicants at the freshman level, and the first year we had 1200 applicants.

Q. Now, how did you decide to select the students from the various schools when it became a four-year high school?

A. Well, when it became a four-year high school the selection of students then took place at the elementary level, at the completion of the elementary school, rather than at the freshman level of the high school, and we decided that the fair way to do it would be to give every school so many places of those students that were to be selected.

The first thing we did was to establish the total enrollment of eighth grade students that year, citywide, both public and private schools.

That was right in the neighborhood of 5,000 students. We were shooting for an enrollment of 500 that year. So we guaranteed every elementary school that we would take ten percent of their total eighth grade enrollment.

Q. And that was ten percent of each elementary school in the City of Dayton?

A. That's right.

Q. And did you do that for the start of the year for 1968-69?

A. Yes.

Q. Now, were there any other criteria or selection processes that were gone into rather than, I guess we call it, the ten percent?

A. No. Again, I'm not sure I understand your question.

Q. Of the students that applied, where did they apply for admission to the school?

A. Well, we had a printed application form that they could pick up either from their counselor or their principal, whichever it happened to be, and they could return the application blank completed and signed by their parent to their counselor or principal, and then we made a return visit to the school for an interview with each student.

Q. Now, at any time after it became a four-year high school, was the policy for selecting students changed?

A. Yes.

Q. And would there have been a change in the year 1970-71?

A. 1970-71?

Yes, we went to a selection criteria that Dr. Durant, along with Dr. Goff, helped us to work out to make the selection more objective.

Q. And could you explain that?

A. Well, I don't know what you mean.

Q. What do you mean by being more objective?

A. Well, it was felt that the counselors of our school had too much authority in the selection of students previous to

that, and that the selection should be more objective than subjective.

Q. And was there any change then in the policy of selection in the year prior to 1971-72, the registration period?

A. Yes.

Q. What was that change?

A. That year, which would be the present freshman class, the students were selected by lottery.

Q. And was there any basis or change in that at that time?

A. No.

Q. Were there any criteria established for percentages on ratio on black or white or female or male?

A. Yes. Again, the first thing established is the total number of eighth graders in the city, and then the percentage of black students citywide, so the percentage of black students citywide is the same as the percentage of black students except in our freshman class.

Q. And that became effective what year?

A. This year, this school year.

CROSS-EXAMINATION

BY MR. LUCAS:

Q. Let's, if we can, put the policy in reverse order.

You said in 1971-72 students were selected by lottery?

A. That's right.

Q. Now, does the 10 percent rule still apply?

A. Yes, sir.

Q. So you get your pool. Is it from all of the elementary schools you take? You see how many eighth graders you have?

A. Right.

Q. And 10 percent from every school are eligible to go into the pool, is that right?

A. Well, it's not 10 percent every year. The percentage depends on the total enrollment of eighth grade students citywide.

The percentage may vary from one year to the other.

Q. Okay. When was the 10 percent rule instituted? Was that 1968?

A. That was the first year we were shooting for 10 percent.

Q. Okay. That 10 percent has been dropped, is that correct?

A. Well, the percentage varies from year to year, depending on the total enrollment.

Q. So there is no flat 10 percent rate?

A. That's right. The flat figure is 500 freshmen each year.

Q. Now, before 1968 how did a child get into the school, before you had the freshman class?

A. Okay. A freshman in another high school would make application directly to the vocational division he wanted to enroll in.

Q. The vocational division at Patterson, is that right?

A. Right.

Q. He would not go through his counsellor and be in turn recommended to you?

A. No. We visited the schools, and as we visited we visited the high schools, and put the presentation on for the freshman class, and as we visited they could pick up application blanks and other literature from us, but then they returned them directly to us.

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[R. I. 1748-1764, Vol. 17] Q. All right. And then the counsellors made the decision as to how many students would get in. And how many would you take in an average class before 1968?

A. Well, before 1968 we would take most anyone that applied, providing he was passing and had a good attendance record.

Q. Okay. Before that time, since 1914, really, when it was founded, Patterson had operated below capacity, is that correct?

A. That's right.

Q. In 1968 – I'm sorry. Let's go back.

Were you there in 1953?

A. I came there in the fall of 1953.

Q. All right. Was there any black teachers at Patterson at that time?

A. No, sir.

Q. Were there any black counsellors?

A. No, sir.

Q. And the admission process was through black counsellors, is that – I'm sorry. Through the counselling department in each division?

A. Yes.

Q. All right. And how long a period was it before you had any black teachers at Patterson?

A. I can't answer that exactly. In the early '60's we had one black teacher in the medical arts department, but I can't –

Q. I'm sorry? What department?

A. Medical arts, but I can't tell you the years.

Q. All right. When did you get your first black counsellor?

A. '68 or '69.

Q. So until that time the primary admitting unit, or until 1968 at least, the admission process was through the counsellor, and you had no black counsellors, is that correct?

A. That's correct.

Q. By 1969 how many black teachers did you have?

A. 1968?

Q. Yes.

A. I don't know that we had any. I can't say for sure but I don't know that we had any in 1968.

Q. Was it the '69-70 school year that you got your first black counsellor?

A. I would guess the '69-70 school year, yes.

Q. Right. Now, was it the '68-69 school year that you had the policy change about the 10 percent?

A. No. The '68-69 school year was the first year for the freshman class.

Q. All right.

A. And the 10 percent was established for the first year because the total enrollment city-wide was 5,000, and we were shooting for a mark of 500 freshmen.

Q. So you took the 10 percent for each school for the '68-69 school year?

A. Right.

Q. That's what I want to understand.

Now, what was the admission process, the '68-69 school year? If you can just sort of trace for me, what the average child who was interested in Patterson, what process would he follow to get in?

A. Okay. In the '68-69 year we visited the elementary schools and we put on a program that was very similar to the one we put on in the high schools, to present to the students the opportunities that were available to them at Patterson Co-op.

Q. Was this an all white presentation team?

A. In '68-69, probably.

Q. Go on.

A. We left then application blanks in the elementary schools for the students to pick them up from either their counsellor or their principal. In some schools they didn't have counsellors at the elementary level, so they had to pick them up from the principal's office.

They had to take them home, have them completed, and signed by the parents, and returned to the counsellor in their elementary school.

We then went back and interviewed those students and made our selection from those that applied.

Q. Now, when you say we, do you mean the team or the usual counsellors from each department?

A. A team of counsellors.

Q. I see. And do you generally draw your team, one from each department in the school?

A. We did, yes, the first year, and we did when we were visiting high schools.

Q. So essentially it was still the same initial process through

the counsellors, except the source of applications was more organized?

A. Right.

Q. Is that a fair statement?

A. Yes.

Q. All right. Assuming you had 10 percent from each school – I am not sure yet I understand how it works. Can we do it with numbers?

A. Yes.

Q. Give me an example of a school you had a freshman class to fill.

A. Let's say Westwood School had 100 eighth graders. We were going to take 10 from Westwood School. Now, they may only have 10 apply, but we will take those 10. If they had 40 apply, we would take 10 from the 40, but if they have 100, we still will take 10.

Q. Using the 10 percent figure, that would be sufficient to give you a full freshman class?

THE COURT: Let me ask one question, if I may. You indicated you conducted a lottery. Is it a lottery at each school that has in excess of the percentage number?

THE WITNESS: I am not sure I understand your question.

THE COURT: All right. Let's assume this example; You have 100 eighth graders and you are going to take 10. Forty apply. Do you conduct a lottery among those 40?

THE WITNESS: Yes.

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Q. The lottery was not in effect in 1968-69?

A. No. The lottery was only in effect for the present school year.

Q. I think you have got me cleared up on 1968-69. How many new students did you take in?

A. Five-hundred.

Q. Is that all freshmen that year?

A. No. Well, the 500 was freshmen. I didn't answer your question correctly, and I am sorry. The 1968-69 school year,

we had to take two classes, a freshman and a sophomore class. We took 500 freshmen or approximately 500 freshmen.

Q. Now, before you added the freshman class to the school, am I correct that you started with sophomores and they stayed in the school full time and took the regular curriculum and at the 11th and 12th grades they worked two weeks and had two weeks of study?

A. That's right.

Q. So, their first year coming into the school was a question of getting them a job. They had a regular curriculum in the school unit; is that correct?

A. That's right.

Q. And that continues today even though you have four grades, freshmen and sophomore students have their schooling in the self-contained school unit and in the 11th and 12th grades they do the two weeks of work and two weeks of schooling?

A. That's right.

Q. Are there any students in the 11th and 12th grades who do not do the two weeks on and two weeks off and take just only school courses?

A. From time to time there are, yes.

Q. I mean, is a student absolutely required to do the work part of the program under the four years school that you now have?

A. Yes, that is part of his program.

Q. What if you can't get him a job? I don't want to use kicked out, but is he sent back to another school?

A. No, not always. We keep them. Sometimes they are, sometimes they aren't, depending on the student and the circumstances, but normally a student that is doing well in school and has the job potential, we will keep him until we find him a job.

Q. And if you are unable to find him a job because of the depressed labor market or what have you, would you just keep him on through graduation?

A. Yes.

Q. And he gets the same kind of degree the other students do?

A. Yes.

Q. Now, you said that in 1970-71 there was another policy changing that that Dr. Durant and Dr. Goff had worked out, some policy criteria for acceptance of children?

A. Yes.

Q. What was the reason for adoption of this policy?

A. Well, there has always been in some of the other schools the feeling that the counsellors from our school or the co-ordinators from our school had been too subjective in their selection and not objective enough in the criteria selection rating scale that they devised which was an attempt to become more objective rather than as subjective as it had been.

Q. You say this has always been a problem?

A. As long as I have been there.

Q. Is this something that came about in 1968-69? You have had a problem before?

A. No, we have always had the problem.

Q. As I understood it, you took in anyone who was in good standing before that because you had plenty of excess space?

A. That's right, but the criticism was there in spite of it.

Q. I am sorry?

A. The criticism was there in spite of it.

Q. Even though you took everybody who applied and was in good standing?

A. That's right.

Q. You didn't reject anyone?

A. Only those that were failing or had poor attendance records.

Q. In 1970-71, was there any particular acceleration of this criticism as a result of the adding of the freshman class?

A. Yes.

Q. Was that the first time you actually limited enrollment at Patterson?

A. No, no. The limited enrollment was in 1968-69.

Q. And therefore, in 1970-71, you had this criticism and you attempted to deal with it by setting up these criteria?

A. That's correct.

Q. And I take it that didn't satisfy the criticisms.

A. That's right.

Q. So, you adopted what you call a lottery method in 1971-72 where you take the percentage city-wide depending on you needs in terms of an entrance class which is 500?

A. Right.

Q. You take the same percentage from each school?

A. The same percentage from each school.

Q. Is it the percentage of the 500 that you divide up among all the schools or do you take a percentage of the – suppose School A has 500 people who want to go to Patterson whereas School B only has 2. Do they still get the same 8 percent or 7 percent quota?

A. Yes.

Q. So that a child going to one school where there are more children applying for Patterson may be excluded from Patterson because his school's quota is filled; is that right?

A. Would you state the question again?

Q. Okay. Let's take Jackson Elementary. Suppose under the quota you can take 10 children.

A. Okay.

Q. You can take 10 children from Jackson and you have 40 who want to go.

A. Okay.

Q. Obviously there are 30 children who don't get to go to Patterson.

A. Right.

Q. Whereas Shoup Mill might have 2 children who want to go to Patterson and have a quota which would permit 5 or 6 more children to go. Is there any provision for filling the vacancy by letting some of those other children from Jackson who wanted to go take up that gap in the quota?

A. Yes.

Q. How do you work that?

A. Once a quota for each school has been established and selected, then those schools who have not met their quota, all the students that have not been selected go into a city-wide pool and then they are selected from that.

Q. And how do you get your racial quota now?

A. How do we get it now?

Q. Well, you told us how you figured it. You took all eighth graders in the city and then you took or you figured out what percentage black that was and that was the percentage you tried to have in your annual class; am I right?

A. Right.

Q. And all I am asking is how do you go about doing that? Does it automatically happen that you get that percentage black or do you have to use some other techniques to achieve the percentage of blacks that there are in the eighth grade system?

A. You have confused me with your question.

Q. Let me go back. It is my fault, I am sure.

Let's assume that your percentage of black children in the eighth grade is such that you require 200 black children in the entering freshman class.

A. Yes.

Q. Suppose under the formula, the way it works on a lottery, you only get 150. How do you go about getting the other 50?

A. Well, the city-wide pool is divided into boys, girls, black and white, and they will select them out of the city-wide pool.

Q. And you don't use a lottery on that pool?

A. Yes.

Q. Well, how do you make sure you get the extra 50 black children in my example?

A. Well, we ask the computer service to draw us the extra fifty blacks out of the city-wide pool, be they boys or girls.

Q. If there are 500 blacks in the pool, then you take 50 by lottery from the black pool; is that right?

A. Yes.

Q. What is the purpose of setting up these criteria?

A. You mean the percentage of black and white?

Q. Yes. What is the purpose for doing that?

A. It goes back to our original purpose, I think, of trying to get as good a cross section from the entire city as we can possibly get.

Q. You say your original purpose. How far back does that go?

A. In 1968 when we became a four-year high school. That is the way we set it up then.

Q. In order to get a cross section from the city as a whole, you have to look at factors such as race and sex and things of this sort; is that correct?

A. Yes, sir.

Q. And that's the technique that the school system itself has devised for doing?

A. Yes.

Q. How many black children were in Patterson in 1968?

A. In 1968?

Q. Yes.

A. I do not know.

Q. Approximately?

A. Are you talking about percentage-wise or numbers?

Q. Either way.

A. I can't answer that.

• • •

A. If I read this correctly, in 1968, 18.3 percent. Am I right?

Q. Right. What about the other years? Do you have that on the exhibit?

A. 1969, 22.2 percent; 1970, 29.8 percent; 1971, 31 percent; and 1972, 32.9 percent.

Q. How about 1963, do you have that figure on there?

A. 1963, yes. That is 1.8 percent.

Q. How do you account for the small number of black students in Patterson in those years?

A. What year are you talking about?
Q. 1963 and 1966.
A. I am not certain I can account for that period. We visited the black high schools the same as we visited all other high schools. I know that black students were reluctant to come to Patterson High School much moreso than students from other high schools, and I don't know the reason for that.
Q. Were they discouraged from coming in any way?
A. Not to my knowledge.
Q. Were they not told of the difficulty getting them jobs because of the discrimination in the job market?
A. Were they told that?
Q. Yes.
A. We certainly didn't tell them that.
Q. The counselors didn't tell them that?
A. No, sir.
Q. How do you know that? Were you present when counselors met with the students?
A. I was on the counseling teams that visited.
Q. Would you agree with Superintendent French when he said that that was the reason why blacks were not taken into Patterson, because you couldn't place them in jobs?
A. That may have been one of the reasons, but we certainly didn't tell students that, and we never discussed that in any kind of a staff meeting in our building.
Q. Was it a problem that you had?
A. I don't know that it was a problem because we never had enough black students in those days to test it.
Q. Do you recall in 1958 at the time that the policy was announced the policy changed adding of the extra grade at Patterson making a statement that you were still working on this area of job discrimination by employers and there is still some areas where there are problems but it is being eliminated?
A. Yes, I can remember that.
Q. Do you remember making that statement?
A. I don't remember making the statement, no, but I can remember us working on that problem because there was

some job discrimination, but we never had an opportunity to test it to any extent.
MR. LUCAS: Your Honor, I have a clipping I would like to exhibit to the witness and see if it refreshes his recollection.
Q. Does that refresh your memory of that meeting?
A. No.

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X. TESTIMONY OF WALTER M. BAGWELL.

[R. I. 1780-1782, Vol. 18] Q. Would you state your name, please?
A. Walter M. Bagwell.
Q. And where do you live, Mr. Bagwell?
A. 5531 Wolfe Road, Dayton, Ohio.
Q. And are you presently employed?
A. Yes, I am.
Q. And where are you employed?
A. At the Sinclair Community College, Director of Physical Plans.
Q. And basically what do you do at Sinclair?
A. Responsible to the Board and coordinator between the architects and the contractor for the construction of the college.
Q. And what is Sinclair?
A. It is a junior college.
Q. Is this a new building that was constructed?
A. It's a new building.
Q. And before your position with Sinclair College, where else were you employed?
A. I was employed by the Dayton Board of Education.
Q. And in what capacity were you employed by the Dayton Board?
A. As Assistant Superintendent in charge of business.
THE COURT: In charge of what?
THE WITNESS: Business.

• • •

Q. And how long did you hold that position?

A. I was acting superintendent from June until November, 1953, as an appointee to the job in November of 1953 until June of 1969.

Q. And is that your first association with the Dayton Board of Education, June of '53?

A. No. I came with the Board in June or July of '52 as assistant to Mr. Carlson who was the Business Manager.

Q. You were assistant, then, and took over as Business Manager the following year?

A. Right.

Q. And as Business Manager, what were your duties or what did your job involve?

A. Primarily I was responsible for the operation and maintence of the existing plant which included the cafeterias maintenance and operation, for the planning and recommendation of architects in the construction of new buildings.

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[R. I. 1783-1784, Vol. 18] Q. Could you tell us during the period of time that you were with the Board what criteria you used for site selection of new buildings?

A. Well, primarily the site selections were in the area where the children were and, of course, along with that was the economics of it. The schools work closely with the city in locating their schools adjacent to playgrounds if they happen to be in the same area where the students were located or lived.

Q. Were there any other factors that you took into consideration?

A. Yes. All of the schools had to be within walking distance which the Board had set up from their homes to the school site, and this was normally the case. Transportation was not provided for them unless it happened to be a hazardous situation for them such as highways that had no sidewalks or railroads that had to be crossed.

Q. Now, you indicated that you were building the buildings where the children were. Did you take into consideration where they may be?

A. Yes. We bought a couple of sites on the basis of anticipated enrollments on the basis of plans that had been submitted to the City Planning Board, and we bought sites for those locations with the intent that if the development went ahead, we would build schools there.

Q. How did you determine where the children were going to be or may be?

A. From the plans and plats that were submitted to the Planning Board, we received a copy of those for review to get an idea of the layouts to see that there was adequate walkways that would permit access from the plats by streets or by dedicated easements that would lead to the schools.

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[R. I. 1788, Vol. 18] Q. And where is Carlson located again?

A. Carlson is on the southern end of Gettysburg and Germantown. It would be the west and north corner.

Q. And what were the considerations that went into locating that school there?

A. Well, it was the site size. It was economic. So we had students who were across the street from Gettysburg, across the street from Carlson. We had quite a development going in the rear of Carlson School that abutted it. There was a possibility that the Veterans Administration would dispose of quite a bit of their land that was going into housing projects, and at one time plans were set up, but they did not crystallize. Part of the land was bought off or given to the University of Dayton for their west campus. But quite a bit of it did go into development.

Q. And does the University of Dayton still own that land?

A. They still own that land. They have some 75 acres there, I believe.

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[R. I. 1790-1797, Vol. 18] Q. The next school that we have is Gardendale, and that is located where?

A. That's Gardendale, and that –

Q. If you could, general locations, locating it for the record, please?

A. It is west. On Western Avenue and Gettysburg. The west side of Gettysburg and what would be the extension of Western Avenue. Western Avenue wasn't extended at that time.

Q. And could you tell us what considerations went into locating that school there?

A. Gardendale, one of the main considerations at the time of building Gardendale was the school wanted to develop a program to house all of its mentally retarded students who were at that time being housed in Orville Wright, which was on the opposite side of the city, and since all of those students were transported to the site, it didn't matter too much the location of the school, since we transported them from all parts of the county, or of the city district, and a number of them came from out of the district. But the school was primarily developed for the mentally retarded, and then there was part of the Townview area in the back that was developing, and so additional rooms were added to that school in order to make it some 20 to 23 rooms, I believe.

Q. Was there ever any consideration or any fact given to the possible annexation of the school district into the Townview area?

A. At one time there was a discussion of Townview coming into the school district.

Q. Townview would be where, what part?

A. Right at that location.

Q. Around here?

A. That's right.

Q. Which would be on the west of Gardendale?

A. Yes. It adjoins the Gardendale School, abuts up against the school district.

Q. How many rooms were constructed for the mentally retarded?

A. I believe there were eight rooms which were self-contained, that is, had their own toilet facilities, storage and everything else, plus they had utilization of the gymnasium facilities and the other special items, such as industrial arts, home ec areas.

Q. Do you know why you had to place those children in a school in the Dayton System?

A. I'm not sure. They had been with the school system for quite some time. The Board had taken on that responsibility. It may have been mandated by the State law, that we maintain and take care of them.

Q. The next school that we have then is Hickorydale, and that was built when?

A. Hickorydale was built in 1957, and that is south of the Belle Haven area.

Q. And again to what part of the city?

A. That's in the western part of the city. The northwest part. It is between the Gettysburg and the Belle Haven area. That school was also built adjacent to some 40 acres of city park, and we have some 10 or 11 acres there that we developed.

Q. And did you give us the year that that was –

A. 1957, I believe it was.

Q. That was the date of construction?

A. Yes.

Q. And what other factors went into consideration of locating Hickorydale?

A. Well, the fact that students were there to relieve Belle Haven. That was primarily it. That and the fact that it was adjacent to the city location, but that area was developing all the way to the north and south of it, all the way up to the Hillcrest area and then going south toward what would be England, Queens Avenue and those streets that were developed.

Q. The next school that we have is Jackson Primary, and when was that built?

A. Jackson Primary was built in 1960.
Q. And that was –
A. On the same site as the Jackson Elementary.
Q. And Jackson is located where?
A. It's in the west side of the city, southwest part.
Q. And why was it located where it was, on that site?
A. Well, all of our primary schools are on the same site as the original building, the elementary part, and it would have been a matter of having to go out and pick another site that was out of the district, or not as centrally located. Many of the students, in the primary schools, they were brought to school by their older brothers and sisters who walked them to school, and so this would have been another problem of placing them in a different location. It was just an ideal location to put it in.
Q. Was this located because of the students' need there again?
A. Yes. It shortened up the playground, which we were limited in, because of the street locations and the industrial site to the west and the railroad to the north, but we had made an attempt earlier to try to save the play area by putting it down in a certain corner of the site, but the long-range plans of the city is to have Route 35 come through there, and so we had to move it at the insistence of the city.
Q. That would be the extension of Route 35, and it is now a four-lane highway on the eastern side of the city?
A. Right. It stopped at the river, or just beyond the river.
Q. And that is stopped as of now where? Where is it stopped?
A. Well, it stops just beyond the interchange of 75 and 35.
Q. In other words, somewhere right around here?
A. Right in that location.
Q. In this location?
A. Right.
Q. And there was plans for extending 35 westward?
A. That's right. And it would come through down Home

Avenue and that area, so it was the city's plan at that time that the possibility that the school would be in the wrong location, and they wanted us to move it, so they asked that we move it. So we redesigned it and relocated it.
Q. The next school that we have is Jefferson, Jefferson Primary.
That was constructed when?
A. Jefferson Primary was constructed in 1967. That's on the same site – it's in the Daytonview area and it –
Q. You will have to find exactly which part of the Daytonview area we are talking about.
A. The northwest area of the city. The immediate northwest, if you want to call it that. Just north of Wolfe Creek, which you have your pointer on there, and it would be Broadway – not Broadway – I'm not sure what would be the right description of it.
Q. This was located where the elementary school was?
A. That's right. Located where the Jefferson Elementary school is, which was built in 1915 or 1916.
Q. What year did you say this was constructed?
A. 1967.
Q. Now, what considerations went into locating this school there?
A. There was quite a bit of discussion held with the city about the possibility of acquiring land at the lower part of Jefferson District.
Q. Excuse me. Where would that have been?
A. That would have been south of the Jefferson School site, down here near what would be the Ferguson-Broadway area.
Q. South of the –
A. District.
Q. South of the present location?
A. Of the present location. It would be Oxford – some five or six blocks south of it.
But the purpose of that was to – there was great need for recreational area in that district because of the fast increase

in the number of students, and so the city had in their long-range plans to acquire land, some eight to ten acres, near Broadway and Riverview and the Ferguson area, and we talked to them about the possibility of moving up their timetable and acquiring land that we could have built a school on with them, and we would acquire land along with their 10 acres, and we would have a decent site and a decent play area, because the present Jefferson site is kind of limited in area.

Q. We are still talking about this proposed area?

A. We wanted to build that school there, but there was quite a bit of public discussion about it and the feeling was that if we built the school there that since the trend of the black movement was north, that we would take a great number of the blacks out of the Jefferson District and would whiten up the Jefferson Elementary School. So this wouldn't be the thing to do, so the final decision was to put the whole school on the same site rather than put the primary school at the lower level.

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Q. Then this site was located at the present elementary site?

A. Right. On the present elementary site. We acquired some additional land there to try to relieve the loss of play area, but that had been a slow process because they are large homes and the development would have been extensive.

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[R. I. 1812-1814, Vol. 18] Let's get back to the schools. The next school we have is Dunbar, and that was built when?

A. That was built in 1962, and that is on Rich Avenue down here in the Miami Chapel area.

Q. And why was that built?

A. That was to relieve the Roosevelt area school, and there was certainly in the early considerations of that school some discussion to hold it or to build it along the Germantown area and to eliminate a lot of the substandard housing in that

area to try to put together a site of some 25 or 35 acres there, but the cost involved and the time that would have been spent in running down the absentee owners and vacating the streets and what have you, to get a decent size would have been prohibitive in cost, and then it came to our attention the land of Dr. Washington who had the acreage not too far south of it which we got 52 acres for quite considerably less and which had all of the facilities except for the streets already available; that is, sewer and water.

Q. The next school that we have is Meadowdale which is located up on the same side as Meadowdale Elementary and that was built when?

A. That was built in 1960.

Q. And what considerations went into locating that school?

A. Well, we acquired that land also along with the site to build the elementary and the area was developing. I forgot the name of the construction people, but we kept in close touch with them and we stated the areas that we wanted to use eventually for a high school and we acquired that. As a matter of fact, I think the developer had given the city something like three acres of ground and we used a park in that area which the city threw in to the School Board to be used as part of the site. That is our Fairview High School.

Q. Now, the next one we have is Patterson, and that's a co-operative school and that is located where?

A. That is in Downtown Dayton.

Q. That was built when?

A. 1952. That's the co-op school.

Q. And where is that located did you say?

A. That is at First and Sinclair.

Q. And why was that located in that particular area?

A. That is where the old Patterson Parker High School was built and it was expanded and we bought land adjacent to it. Eventually we bought the whole block and expanded the high school. The vocational school serves all of the districts.

Q. And finally the last one is Roth High School which is out on the far, far west side.

A. That was built in 1959.

Q. What considerations went into that?

A. That was also a relief of high school students and to serve them in that area. We at one time discussed building the school on Third Street as a means of trying to get it closer to transportation, but difficulties developed and we found that land could be obtained in greater quantity and much less price at Hoover Avenue and Elmhurst or the Elmhurst extension, so we bought 30-some acres at that point and built the school there.

Q. Now, there have been additions onto the existing buildings, have there not?

A. Right.

Q. What considerations went into determining what additions should be placed on buildings?

A. Well, most of the additions were to serve the youngsters in their school district, and if the district increased in size, then we just added the additions to the school and we tried quite often to acquire additional ground to increase a site if it were possible, but if we were to try to build in a square, we would get into the problem of having a smaller school size perhaps since the additions in themselves wouldn't be worth putting a new school up • • •

[R. I. 1816, Vol. 18] Q. Mr. Bagwell, you came to the system in 1952?

A. Right.

Q. Did you teach or do anything else in the school system prior to this time?

A. I acted as Superintendent in charge of the building inspector for the City of Dayton prior to that.

Q. Are you familiar with the standards for minimum site size recommended by the State for elementary schools?

A. I know what the minimums were. They used to say five acres to start with and one acre for every hundred students.

Q. There is a formula?

A. Yes.

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[R. I. 1818-1819, Vol. 18] Q. Are you also familiar with the recommendations for minimum sizes and maximum sizes of schools; for example, that an elementary school should have a minimum of so many students and should generally be kept below a certain number of students?

A. There are recommendations on that. There are personal feelings about what makes a large school or small school or good school or bad school.

Q. What are the recommendations for minimum size for an elementary school unit?

A. I am not sure I could give you what the educators say on it. I would say 500 to 600 is a good school for the elementary level. In a high school, I would probably want to stay with 1500 to 1800 at the most if it were possible to do that. Sometimes it is not economically possible.

Q. But you wouldn't go below five or six hundred for elementary. How high would you go for elementary?

A. If I had my druthers, I would probably like to say five or six hundred. With hindsight, I would say —

Q. Well, have you ever dealt with a problem where you recommended it not to to the size that it eventually went to in a particular school?

A. I didn't have too much to do with the sizes that the school went to. The recommendations sometimes were compromised on the matter of money available for building and the finances available for salaries and what have you because larger schools mean that you have less staff. It means that you probably will end up sometimes with more classes that are uniform in size throughout rather than having smidgens of classes or small size classes, and this is pretty expensive because the greatest cost in your school setup is your teaching, and just one pupil more or less you have heard in the Dayton System is worth a million dollars just to take one out of every classroom a year and train them.

Q. Did you make recommendations in connection with the cost of maintenance when the schools got over certain sizes?

A. Yes. I made recommendations, but it was known from information that in the larger schools – well, in fact, in all cases, the larger the school, usually you had a greater percentage of vandalism at it.

Q. Did you not in fact recommend against the location of certain schools and placing of units in particular places because you know what would happen in terms of enrollment and impaction in that area?

A. I think the one that I readily recall I was against the location of was the Jefferson Primary School.

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[R. I. 1824-1826, Vol. 18] Q. As a preliminary question, were you around when the schools were opened and did you see to it that everything was ready to start operation?

A. Right.

Q. Did you attend the dedication ceremonies?

A. Not when I could get out of them?

Q. But you were familiar and checked with the school when it was in operation to make sure it was within the warranties?

A. Right.

Q. Directing your attention now to the Belle Haven School which was in the northwest area –

A. Right.

Q. – are you aware that that school opened with a 100 percent white faculty?

A. Right, although I would assume it would be because it was in that neighborhood at that time.

Q. Now, the Carlson School, that opened with a 100 percent black faculty, did it not?

A. Well, if it didn't, it was close to it.

Q. Eastmont, did it open with a 100 percent white faculty?

A. Right.

Q. Fairport, did it open with a 100 percent black faculty?

A. No, white.

Q. I am sorry, 100 percent white faculty, and that's the one that you say a developer offered the School Board space, the free land if they would build a school in that area; correct?

A. He offered the land that they could build a school on it if it would fit the needs of the school area; that is, if it was located in the site that would be adjacent to the youngsters.

Q. Mr. Bagwell, are you familiar with the advertising for new subdivisions where they say new school to be built in this area and new church, new shopping center?

A. Yes.

Q. The developer in this case gave you how many acres?

A. Twelve acres, I believe.

Q. And when that school opened, it was a white school or black school?

A. White school.

Q. And white faculty?

A. White faculty.

THE COURT: Mr. Lucas, I will permit you to pursue this, it is cross-examination. I would observe that this issue has been really well-developed in this case. I am completely familiar with the position that the plaintiffs have taken, and you have well-documented it. I think there is no question that there were schools staffed by white faculties and schools staffed by black faculties, but it is also my understanding and it has been well documented that at a point in time this was specifically changed. Now, referring to my original statement, I will permit you to go forward. I really don't see the pertinence at this point in the case of spending time on that issue.

MR.LUCAS: Your Honor, as understand, the evidence was presented that the schools were built where children were and we understand arguments flow from that and we are trying to show the school was identified wherever it was built by its faculty.

THE COURT: All right.

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[R. I. 1828-1829, Vol. 18] Q. The Hickorydale, where is that located? Is that to the west?

A. That's in the west and northwest areas, just south of Belle Haven School District. It is along the Wolfe Creek side.

Q. How large a school is that?

A. I don't know what it is at this point. It was at one time something like 30 or 35 classrooms, so it could have been seven or eight or nine-hundred.

Q. In 1972 enrollment indicates that there are only 475 pupils in that school. Was there a fire or anything else that happened to the building?

A. No. One of the things that might have affected the enrollment in many of these schools is the fact that they are getting into programs that will take more of the space for any number of things. It could have been reduced classroom size. When I started with the system there was 35 in the classroom. That's the average. And over the years they reduced it down to something less than 30, 28, 27, in that area, which would affect the kind of enrollment you have also.

But they have also several programs housing some of the school areas. Part of the area may have been taken up by development of the cafeterias, which until after I left the school system, we did not have cafeterias except in the high schools and in the special schools.

Q. Do you know whether any of that took place in Hickorydale?

A. I couldn't tell you that.

Q. You don't know?

A. No. I know a cafeteria took part of it, but that may have been just the gymnasium and some other areas.

Q. Were there 35 classrooms there?

A. I don't know that.

Hickorydale?

Q. Yes.

A. It says 14 – no.

Q. Pardon?

A. Fourteen classroom, and then eight, so it's 22.

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[R. I. 1848, Vol. 18] A. Right.

Q. And so instead you built additions in a particular area and you avoided the problem of boundary adjustment.

A. Right.

Q. Would you agree that in effect then, when you add – put an addition to a school, that as far as that space is concerned, you determine the boundaries and they are coextensive with the original boundaries of the school? Is that a fair statement?

A. I would say so.

Q. Pardon?

A. Yes.

Q. All right. So that if a school is already 100 percent black and you are making an addition to that school, you in effect have determined the boundaries to be that creating a hundred percent black school unit?

A. That's right, in most cases it was.

Q. All right. And for those primaries that opened a hundred percent black or white, the same would be true, although we call those new schools?

A. Right.

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[R. I. 1860-1862, Vol. 18] A. Right. I would assume anything I would say on the percentages of the faculty would be – I would tend to agree with you because I don't know that.

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THE WITNESS: For being in the area it was and the policy the Board followed, I would assume there would be a black student body and black staff.

Q. Did the Roth and Meadowdale planning go on at approximately the same time? Meadowdale was opened when?

A. About 10 or 12 years ago. Let's see, Meadowdale here is listed as 1960.

Q. And Roth was opened when?

A. In 1959, the year before, so construction would have been underway and Meadowdale and Roth and Dunbar probably would all have some construction or planning going on at the same time.

Q. And Belmont was what year?

A. 1952-53, that year.

Q. Was there an addition to Belmont High School?

A. Yes, there was.

Q. What year?

A. Probably 1966, somewhere in there.

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Q. Would you hand the witness Exhibit C?

Q. Would you look under the school Shoup Mill, please?

A. All right.

Q. And for the year 1968-69, how many students were enrolled at that school?

A. 365.

Q. And under Valerie for the year 1969-70, how many were enrolled in that school?

A. 1969-70, 486.

Q. Then, going to one other question that was asked you on this transportation across the railroad tracks, you indicated that that was a matter of no access there.

A. That's right. I believe that I can readily recall it was a Grant School District in which there were students east of the railroad and the Board used to transport them back and forth, but when the access was developed across there, that transportation was eliminated.

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Y. TESTIMONY OF RALPH CURK.

[R. I. 1864-1879, Vol. 18] Q. Could you give us your name, sir?

A. Ralph Curk.

Q. Where do you live?

A. 7210 Noretta Court.

Q. What is your present occupation, Mr. Curk?

A. Retired.

Q. And from what are you retired?

A. Director of Research of the Dayton Board of Education.

Q. Can you give us the history of your association with the Dayton School System as a student teacher or member of the Administration?

A. Well, it started as kindergarten student at Edison School through seventh grade at Edison, grade 8 at Weaver, grade 9 at Parker, graduated from Stivers High School, got my Bachelor of Science Degree at Indiana Central University and came back to Dayton as a teacher in 1928. I was a teacher at Clearview for three years and went to Roosevelt for three years, was Director of Research for 18 years, and retired in June, 1968.

Q. What subject matter did you teach at Roosevelt, Mr. Curk?

A. General science and chemistry.

Q. Were you involved in any administrative duties in addition to your teaching duties there?

A. Well, I wouldn't consider them administrative. I was a student counselor.

Q. When did you leave Roosevelt and go to the Central Office as Director of Research?

A. 1950.

Q. And when did you retire from that position?

A. 1968.

Q. Can you tell us what your duties were as Director of Research for the Dayton School System?

A. Well, primarily it had to do with the budget, estimating

the tax duplicate and the financial revenues, projecting the expenditures over a period of years anticipating the size of operating levies that the School Board might have to ask the voters to supply, the analysis of the census, projecting school enrollments, projecting the need for a staff and, well, I suppose anything financial eventually found its way over my desk whether I was directly involved in it or indirectly involved in it.

Q. What individuals and positions comprised the Executive Staff of the Dayton School Administration during this 18-year period that you were associated with them?

A. We were very fortunate in our Superintendent as being a true executive, and he would have staff meetings consisting of the three Assistant Superintendents, the Director of Pupil Personnel, the Clerk Treasurer, and myself on the staff.

Q. Can you identify the individuals that filled the staff positions during that 18-year period?

A. The Assistant Superintendent in charge of curriculum was Dr. Howard Boda, the Assistant Superintendent in charge of Staff Personnel was Homer Royer, and when I first went down, the Assistant Superintendent in charge of Business was Frank Carlson and replaced by Mason Bagwell, and the Director of Pupil Personnel was Harold Armstrong who later retired and was replaced by Mr. Goff.

Q. When did Mr. Goff assume that position?

A. I think it was in 1964.

Q. Does that cover the group?

A. And did I mention the Clerk Treasurer? He always sat in on the staff meeting.

Q. Who was the Superintendent of the System during this period?

A. Mr. Robert French.

Q. Is he associated with the School System at the present time?

A. He is a member of the Board of Education?

Q. As part of your administrative duties during this 18-year period, were you consulted with respect to the drawing of attendance and optional zones, Mr. Curk?

A. Quite often Mr. Armstrong would have a problem, and since I was involved in anticipating enrollments in various areas, he would come up and consult with me. We would go out and drive the area, examine it for hazards, accessibility, distance, and get a feel for the problems as presented to him at that time. Then, he would from that observation and discussion between he and I come up with a recommendation to the staff, and then in staff meeting we would have a chance to tear it apart and cuss and discuss it and then Mr. French along with Mr. Armstrong would have the recommendation for the Board.

Q. Did your same practice continue after Mr. Armstrong was replaced by Dr. Goff in 1964?

A. Not to the same extent, but the inter-offce communication of these problems and their recommendation, I was always notified of that.

Q. Were you retained by the Dayton Board of Education in connection with this lawsuit, Mr. Curk?

A. Yes, sir.

Q. And what have you done in connection with this case?

A. Well, after four and a half years, I had forgotten quite a bit. So, in order to refamiliarize myself with some of the things that happened in those years, I went back to the Board and, of course, after four and half years my files were defunct. So I went down to the attendance department and asked for copies of the monthly enrollment in October. The first two weeks, and I understand now it is the first week in October, is used as a basis of reporting to the State Department for the foundation program. So, I got copies of the enrollment from, I think it is, 1941, and I didn't have time to complete it, but it did give me the attendance pattern of the schools. I went over the exhibit that Mr. Krebs supplied for me that had the building information on it and also went to the vault where all the minutes of the Board of Education were kept, and I used the index to look up items of schools that I had forgotten about, boundaries and boundary changes and things of that

nature that were a matter of record in the Board of Education minutes to refresh my memory.

Q. Now, your deposition was taken in this case on October 24, was it not?

A. I think that was the date.

Q. At that time had you completed your study and analysis that you have described to us?

A. I have refamiliarized myself with a lot more since then.

Q. How long before your deposition had you actually been retained in this case?

A. I don't remember. I know the Board met on Thursday night and it was at that meeting that I was retained and Mr. Krebs called me to come down on Friday, and he outlined schedually what he would like for me to do to assist in this matter, and I think it was the following Tuesday. So, I probably had about a week and two days since to go back over some of the things that had happened while I was down there before the deposition.

Q. During your period of tenure with the Dayton School System, what was the practice of the system with respect to distribution of supplies to the various schools?

A. Well, it is always on a per pupil basis. Again, I used the October report, the special report to determine the enrollment in each individual school, the kindergarten enrollment, the special education enrollment, the industrial arts enrollment, the home economics enrollment and all of that, and each one of those had a specific rate or amount of money that was multiplied by the number of pupils in the particular building, and that was compiled and given to the purchasing department.

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Q. You may complete your answer, Mr. Curk.

A. I need to have part of it read back to see where I was.

A. And the purchasing department would notify the principal or the responsible person in the representative buildings and that would be the basis for expenditure of the next year's budget.

Q. All right. Was the practice the same with respect to each school in the system?

A. Yes, sir.

Q. Were there ever any junior high schools in the Dayton School System?

A. The junior high program started, oh, in the middle or late twenties, I think maybe 1925 or 1967, and then in the middle or late thirties Dr. Oley from the Ohio State University headed up a survey commission. I forget the title of it, but the sum and substance and result of that was a recommendation that the Dayton Board of Education eliminate its junior high school and go from a 1 through 8 and 9 through 12 organization.

Q. Was that recommendation accepted?

A. It was accepted and the junior high school was eliminated in September 1940.

Q. After the elimination of the junior high school in 1940 were there ever instances where 7th and 8th graders were assigned to specific high schools?

A. Quite often.

Q. What were the reasons for that and when did it occur?

A. The reasons for it would be overcrowding in the elementary buildings, and it would be a temporary condition until arrangements could be made to provide classroom space to accommodate them in their own building or maybe a new building constructed.

Q. Can you tell me what high schools in the system were affected by this?

A. Well, Dunbar, Roosevelt, Kiser, Colonel White, and Stivers. I am not sure of Belmont and Wilbur Wright, whether they ever had 8th graders or 7th and 8th graders. I would have to check my records on that, and I don't know if they are complete enough to give me that information.

Q. There has been some evidence here concerning assignment of the 7th and 8th graders from Garfield or Willard Schools to Dunbar in the early '40's, I believe 1942. Do you

have any records to indicate what the situation was on assignment of students throughout the system at that time?

A. Well, when I took my attendance patterns and copied them off from the child accounting record, and that was one of the reasons I did it, to get a feel for this, and there was evidence I think, if my memory serves me correctly, that in 1942, the year in question, Roosevelt and Kiser, I think, either Kiser or Colonel White, I think there are two other schools other than Dunbar that housed 8th graders or 7th and 8th graders.

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Q. Mr. Curk, with respect to Garfield, or Willard students who received temporary assignments in the 7th or 8th grade to Dunbar High School, can you tell us whether those students retained the option of going on to Dunbar or Roosevelt High School after completing their 8th grade education?

A. Yes, they would have.

Q. Are you familiar, Mr. Curk, with the boundary changes affecting Garfield, Willard, and Wogaman that were adopted by the Board in December of 1952?

A. Yes, I am.

Q. And can you tell us the circumstances leading up to those changes and what was done?

A. I am not sure whether it is 1952 or 1953 or when it was, but Mr. French called Representative leaders of the various west side organizations in for a conference, and he explained to them what we had planned to do in our building program to provide school facilities for the mushrooming school enrollment and said that we can do one of two things. We can enlarge Garfield and Willard the same as we are doing for all the other buildings in the city, or we can shrink those boundaries and not add onto those buildings to take care of the increased density of population would allow some of the students in the periphery of those respective districts to attend integrated school systems, such school districts as Edison, Irving, and Whittier and so on.

Q. And what plan was actually adopted by the Board that you referred to?

A. Well, I think it was Plan B they recognized the opportunity and elected Plan B, and that was what was recommended to the Board, and that was the plan adopted.

Q. And just so the record will be clear, which plan was the B plan?

A. That was to shrink the boundaries around Garfield and Willard, and add what was taken away to the peripheral schools, to increase the enrollment pattern at the integrated schools.

Q. In the establishment of the Roth High School attendance zone in 1959, was race taken into consideration?

A. No, sir, it was not.

Q. At the time the attendance zone was established, were you asked to make any survey as to the race of the prospective students at Roth High School?

A. I evidently was. I don't remember the circumstances. But I was shown a report that I had made and it was a guesstimate more than anything else, because looking from the map and estimating that a hundred percent of the school would be feeding into Roth, and a hundred percent of this school, or 75 percent, or 80 percent, or 20 percent, whatever the case might be, and then applying that percentage to the guess of the enrollment pattern of the respective schools involved, I came up with an estimate that I thought that the Roth High School might open with a certain percentage of black students.

Q. And in addition to your check of the races of potential students in connection with Roth, were you also requested to compile information concerning racial distributions of students in the year before the Garfield-Willard and Wogaman boundary changes?

A. There again is one that I have forgotten. In the day of my deposition, I think I was asked a similar question, and I said definitely not. That day at lunch Mr. Krebs just showed me an exhibit that he had received, and I said I wonder

where that came from, because the way it is dated I would have done it, and I don't remember it.

And then later on, at the Board of Education offices, a member of the staff said here's a little goodie that you might remember, there's a worksheet, so I will have to admit that I did prepare the study and while the complete report wasn't on the exhibit, it was just excerpts from it, I suppose that's all that was left, but it seems for, I think it was a five-year period, starting in 1947 and ending in '51-'52, at that time the principals reported at the end of the year – one of the questions on the principals' report to the State Department was the number of Negros enrolled in that particular school that particular year.

Now, I have inferred from the reading of the excerpts that that evidently was my source of information, and I think I commented at the time that it was not reliable because it didn't represent the actual black enrollment at any one day, but the gross enrollment for that particular school year.

So that part of my deposition to the counsel, To Mr. Diamond, I was in error, but I was not aware of it at the time.

Q. Except for these isolated incidents, in 1952, and then in connection with the Roth guesstimate in 1959, did you ever compile or maintain any statistics concerning the race of students in the system during your 18 years as Director of Research?

A. No. We were not conscious of that, at least I wasn't, because at that time it was madatory that we take the census enumeration each May for all of the school-aged children from five through seventeen.

Well, we asked our census enumerators to include anybody born in May at the time that they took the house to house contact, and so we had it from birth through seventeen.

The only information that involved us too much in our projected enrollment figures was the number of parochial students.

Now, we were allowed to ask – the enumerators were allowed to ask if they were going to send their children to parochial schools or to public schools.

So that final tabulation for each school district would indicate to me the number that were attending public schools and the number attending parochial schools, and that the the intimation that I used to develop the survival rate or experience formula for each school district in the projected enrollment. Race was not involved.

Q. Did you have anything to do with the Ohio Civil Rights Commission student surveys that were made in 1963 and subsequent years?

A. No, I did not.

Q. Except for the 1952 attempt to provide more interracial experiences by shrinking the boundaries of certain black elementary schools, did the race of potential students ever play any role in the setting of attendance or optional zones in the Dayton School System?

A. No, sir, it did not.

Q. What factors were taken into consideration in fixing attendance and optional zones?

A. Well, I suppose the prime factor would be availability of space and then the next would be the distance factor. Any hazards that would be present, going to and from school, and accessibility.

I think those four would be the major factors that we took into consideration.

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[R. I. 1882-1897, Vol. 18] Q. All right. Let's move to this eastward path. The next one we would encounter would be the Roosevelt-Colonel White optional area, would it not?

A. That's right.

Q. Most of that option was originally established in 1951, as I understand it, is that correct?

A. Yes. It was a change in the original high school boundary between the Fairview-White complex and Roosevelt. The original boundary was at Oxford Avenue, extending

from Salem over to a point west of Philadelphia. And then this optional area in 1951 came along and went from Oxford to Lexington to Grand and Superior. So there are three blocks north and south that extended from Salem Avenue to Rosedale.

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Q. Salem Avenue on the east side?

A. That's right.

Q. And can you give me the other one?

A. Superior Avenue on the south.

Q. All right. This would be Superior Avenue running east-west to what is now the complete area?

A. I would assume that is Superior. That is the general location of it, yes, sir.

Q. All right. Then it went where?

A. To Rosedale.

Q. All right.

A. And then south on Rosedale to Riverview. Just one line there.

Q. And then where on Riverview?

A. And then west and northwest on Riverview to I think it's pretty close to what used to be called Bessie Little Bridge, or Alcott Avenue came down there, so the extension of Alcott to Wolfe Creek, and then up to Athens, north to Athens, and then east on Athens to Philadelphia, south on Philadelphia to Oxford, and east on Oxford to point of beginning.

Q. In what attendance zone had that area been prior to the creation of this option in 1951?

A. Roosevelt.

Q. How long had it been in Roosevelt district?

A. Well, the original was 1940. This is '51. It would be 11 years.

Q. What was the reason for setting up the optional zone in 1951?

A. Well, this was a little unusual.

If you will remember, one of our factors in setting up

boundaries was distance, and here we are attempting to have a point equidistant from one campus to a split campus.

So at the time that was done, they had to consider both of the distance to the Colonel White area, which housed 9th and 10th grades, and also the distance to the Fairview building, which housed 11th and 12th grades.

So that was a little difficult to do.

And then as the transportation pattern and city transit changed and we were in the process of our building program to give relief to various buildings, they decided to make this an optional area, and while doing so they had to make it as fair for those 9th and 10th graders, and also include the 11th and 12th graders. So that was the reason, I think, for the extension, clear to the west side.

Because as you know, as it goes west, the accessibility to Fairview increases because it is directly up Philadelphia Drive, and I don't know exactly where the gasoline bus made its loop.

I think it was around Cornell, but it might have been farther north, up around Otterbein. I'm not sure.

But there was a gasoline bus which facilitated transportation on Philadelphia, the same as the city transit change transportation on Salem Avenue.

THE COURT: Mr. Curk, why should this not have been transferred to the Colonel White-Fairview District? Why make it an optional zone?

THE WITNESS: Well, Your Honor, I think it dates back to — when 1940 came along, prior to that time to my knowledge there were no high school boundaries. For years anybody in Dayton had a choice between Steel and Stivers. And then Roosevelt came along in the '20's and I'm not aware of any hard lines being drawn in the '20's. So we had a choice of three high schools.

And then when the junior high school program was eliminated and some of these junior high school buildings were converted to high school complexes, it was decided then to make hard lines between these high schools that were then

in existence, and I think that is the first time they ever attempted it, and they had quite a period of resisting change.

THE COURT: What date was this that these lines were drawn?

THE WITNESS: 1940.

THE COURT: This is now 11 years later?

THE WITNESS: Yes.

THE COURT: Why would there be an optional zone created 11 years after you have set up boundary lines?

THE WITNESS: Well, the original lines was again an attempt, I think, to equate the distance between these two complexes and Roosevelt, and if you looked at the eastern side of this optional zone and compare it with Fairview, it is farther, much farther to Fairview than it is to Roosevelt, but yet if you compare the distance from that eastern line to Colonel White, it is much closer than it is to Roosevelt. And then as you go westward, the distance factor changes.

So whether that is sufficient reason for not doing it, Your Honor, I don't know but I'm positive that that was part of the consideration.

THE COURT: Do you have any record, or is there any record of requests that this be made optional for those students who would otherwise go to Roosevelt?

THE WITNESS: Yes, it is a matter of record.

You see, your Honor, I just happened to live three doors south of Oxford when I was teaching at Roosevelt, when this change was made, and just two doors from me there was a child who tried to give a false address so that he would be in the Fairview District instead of the Roosevelt District, and that was quite common. There was a great deal of pressure and requests to the Board to change the boundaries to suit one or more of their conveniences. And this was resisted, as I say, until 1951, when the transportation pattern, the city transit pattern had changed, and the accessibility was a factor that had greater impact, I think, on the decision than the lack of it before.

THE COURT: And if I understand your answer correctly, this is really a matter of convenience and only that?

THE WITNESS: I think it was, sir, yes, sir.

THE COURT: Was there anything else?

THE WITNESS: To my knowledge, no, nothing else was considered.

THE COURT: No. I'm not talking of the convenience of the students only. It was the convenience of the parents and convenience of the Board, is that correct?

THE WITNESS: Well, I don't know how to answer convenience to the Board.

THE COURT: Well, if there were pressures both ways, this is a political body, and political bodies are amenable to pressure.

THE WITNESS: So if they succumb, well, it is a greater convenience to them, I would agree.

THE COURT: You may proceed, Mr. Greer.

Q. In setting up this optional area in 1951, or any of the other optional areas, setting them up in this manner instead of changing hard boundaries, were previous patterns of attendance taken into consideration?

A. Well, I think that's generally true and accepted, that once a child has been in a school, the older children coming along have a tendency to want to attend the same school.

Also, if they are attending an elementary school that happens to be divided between two high schools, and their friends are going to one and they are going to another, there is a reluctance to accept that. So in that context, I think you are correct. The attendance pattern does influence some of these desires.

Q. Now, if we leave out Fairview High School for a minute and just consider access from this area to Roosevelt or to Colonel White, what can you tell us about the physical characteristics of the area as they reflect on access to those two schools?

A. Well, we had a bridge across Wolf Creek at Summit Street. There is a bridge across Wolf Creek at Rosedale, which is in about the center of the optional area, and there is a bridge

across Wolf Creek at, as I referred to, the end of Riverview, the Bessie Little Bridge.

So those three streets would have to be their main approaches from this area north of Little Creek to Rosedale.

Now, Rosedale I am very familiar with because that was my path when I taught at Roosevelt.

On the west side of Rosedale, it was occupied by the Dayton Tire and Rubber Company. Their plant was not adjacent to Rosedale, and in the years before they expanded, this was just an open field and not utilized as a parking lot as it is now.

The area on the east side of Rosedale, between the railroad and Western Avenue, was sort of a holding yard for the packing company in there that was located at the corner of Rosedale and Western, and then the Pennsylvania Railroad, was directly, oh, I would say within one city block south of Riverview, and on the west side it served the Dayton Tire and Rubber Company and its switch yards, on the east side there were a number of coal yards between the railroad and Riverview, and down close to Summit Street was a large company, Simmons, Board and White.

Does that answer your question? Is that what you have in mind?

Q. That answers me on the southern end.

What physical factors are there that would have some bearing on access at the north, as far as students in that area going up towards Colonel White?

A. Well, I don't know of any.

Of course, Salem Avenue was the main artery through there, but there were many connecting streets that would allow these people to move north to Colonel White, many connecting streets and cross streets.

I don't think there were any physical barriers on the north side, between this area and Colonel White.

Q. As I understand it, the problem really was not access to Colonel White, but following on to Fairview High School after the completion of Colonel White.

A. There again, it was a distance factor that was added onto it.

Q. And you indicated about the change in the patterns of the City Transit Bus Company.

What, in 1951, were the public transportation patterns from this area to the vicinity of Fairview High School?

A. Well, I don't know the exact year that it changed, but in the early years the City Transit had a line that crossed the Main Street bridge, the Miami River, Main Street bridge, turned up River Road, up Forest Grove, up Forest Grove to Neil, Five Oaks, went up Five Oaks, or down Five Oaks, over to Salem Avenue, and up Salem to Catauqua Drive where it made its loop.

And then there was a line on Salem Avenue —

Q. First of all, the east end of this optional zone was on Salem Avenue, is that right?

A. That's correct, and this bus facility going up to Colonel White or past — relatively past Colonel White went out to Fairview, would come out on Salem, maybe four or five blocks north of Oxford Avenue, before it hit Salem.

But there was another line on Salem Avenue that looped around Salem and north, which was south of the northern part of this boundary, and then those lines were consolidated, and the line that traversed Salem Avenue from north-southward was combined with the other line and went out to Catauqua, up Catauqua, and as I understand it, I think it now loops around Catauqua, Hillcrest, Philadelphia and back on Salem.

Q. All right. If we look to the west side of the option, which went down to Riverview, what was its access situation?

A. Well, as I mentioned, this gasoline bus — and of course, I was familiar with the bus coming down Philadelphia and going down Riverview to Salem Avenue, and then crossing the bridge there and going on downtown, but the exact northern culmination or loop of that gasoline bus I am not quite sure of, whether it is on Otterbein or where it was.

Q. What about the access from this area in 1951 by public transportation to Roosevelt?

A. Well, there was no crosstown public transportation. If the students elected to use public transportation to get to Roosevelt, they would have to use either the Salem Avenue line or the gasoline bus, go downtown and transfer to the Third Street line and go west on Third Street to Roosevelt.

Q. Now, this optional area was later expanded to its present form, was it not?

A. Yes, sir.

Q. When was that done, why, and what was involved?

A. Well, by 1959, I think, was the first graduating class from Colonel White. So the Fairview-White complex was divided, I think, in 1955, '54 or '55.

Q. If you want to refer to any notes that you may have, why feel free to do so, Mr. Curk.

A. Well, if that date is important, I'll try to do it.

My note here says 12-4-58, when the boundary line was changed.

So the concept of the four-year high school at Fairview and the four year high school at Colonel White would be effective in the '57-58 school year, when Colonel White would have its first juniors and then in '58-59 it had its first seniors and first graduating class.

THE COURT: Mr. Curk, this has been referred to as the Colonel White-Roosevelt optional zone. Do I understand that after 1958 this was a three-way optional zone, also including Fairview, or was it limited to Colonel White and Roosevelt?

THE WITNESS: No. It was a three-way option, between Colonel White and Fairview — I mean Colonel White and Roosevelt, and Fairview and Roosevelt.

The line between the Fairview and Colonel White was drawn so that Philadelphia, the lower part of Philadelphia, was still a part of Colonel White area, and it came up to, I think it was Otterbein Avenue, and then extended east.

THE COURT: I'm not interested really in the specifics. All I want to know is do I understand that any student living in that area could have chosen one of those three schools?

THE WITNESS: No. They could have chosen Fairview and Roosevelt, on the west side.

THE COURT: Do I understand that this is really two optional areas?

THE WITNESS: Two optional areas.

THE COURT: All right. Roosevelt versus Fairview and Roosevelt versus Colonel White. It was not a three-way option?

THE WITNESS: Not a three-way option, no.

Q. What was involved in the change that was made along about the time that Colonel White became a four-year high school?

A. Well, the area bounded by the east by Salem Avenue was moved southward from Superior to Riverview and on down to Wolfe Creek.

Now, Superior to Riverview is a long square, and Riverview to Wolf Creek is a short square and that extended over to Rosedale, which was the beginning of the former optional area.

So it was bounded on the east by Salem Avenue, on the west by Rosedale, on the north by Superior, and on the south by Willard.

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[R. I. 1898-1899, Vol. 18] Q. Let's proceed on east to the Kiser-Colonel White option, which I understand was established in 1962. What can you tell us concerning that optional area?

A. My memory is faulty there, Mr. Greer. I don't remember that. I'm sure that it was considered at staff, brought up at Staff and discussed, but I have no recollection of it at all.

Q. In reviewing the records of the Board, what can you tell us about the racial characteristics of the students at each of those schools in 1962, when the option was created?

A. Well, we have no record for 1962. The closest record we have would be the 1963 Ohio Survey and at that time Kiser was 2.7 and Colonel White was 1.1 percent black.

Q. And what can you tell us about the capacities of the two schools at the time this option was created?

A. Kiser was one of those schools that was a combination junior high school-high school. In other words, at one time it housed the 7th, 8th, 9th, 10th and 11th grades, back in the mid-thirties and then it was converted to a high school and its attendance zone traditionally has not been as densely populated as the other attendance zones or the other high schools in the city.

So I would assume that the capacity of Kiser, there was always available space there, and enrollment would be low after the junior high days.

Q. Was this optional zone taken out of the old Kiser attendance zone or out of the old Colonel White attendance zone?

A. Out of the Colonel White attendance zone.

Q. All right. Let's move on then to the last of the four high school optional areas, which is an area on the east side of Dayton between Wilbur Wright and Belmont, is it not?

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[R. I. 1904-1918, Vol. 19] Let's start with the optional area that exists between Belle Haven School and Ft. McKinley School.

Can you tell us when that was created and why it was not created with hard lines?

A. It was created in 1955, and there were two factors involved in that. One was accessibility and the other was hazards.

Q. What were the accessibility and hazard factors involved?

A. Well, the streets could not have openings to the east to Salem Aveune which would involve the accessibility, and, of course, Salem Avenue is a major artery and would offer a hardship factor or hazard factor.

Q. The next optional area if we start at this same end of

the map and work our way east would be the two optional areas that presently exist between Residence Park and Jane Addams. Can you tell us when they were created and why they weren't drawn with hard lines?

A. In September of 1959, the large one in particular, the entrance to this residential area is off of Hoover Avenue and had no access to the south to Jane Addams School, and in order to exit from this area, they are actually closer to Residence Park before they can continue on their way to Jane Addams, so it is an accessibility factor. The little one square block is about as equadistant as you can get.

Q. As to the Belle Haven-Ft. McKinley and the larger Jane Addams Residence Park optional areas, was there any consideration given to potential development?

A. Well, I think the way districts were drawn was with anticipation of future residential development to open up accessibility, and after that had materialized, it would logically belong in that particular attendance zone.

Q. Do you know whether the development that was anticipated in those small areas actually has come about?

A. Well, to my knowledge, neither one had developed to the point in the Belle Haven-Ft. McKinley, to the east of Ft. McKinley or to the south to Jane Addams.

Q. Going further east, then, to the next optional area which is an optional area between Westwood Elementary School and Jackson Elementary, can you tell us when that option was created and why it was drawn other than by hard lines?

A. That was in 1952, and again the area is about as equadistant as you can get between Jackson and Westwood, and it was changed to an option area because of the hazard of the young children crossing Third Street which is a main east-west artery through the city, carrying not only the city traffic, but U. S. 35 traffic.

Q. Was there anything distinctive about the way that option operated with respect to classes in either school?

A. Yes. This was an unusual situation because of the

hazard. It developed that in 1952, the first year that it was in operation, it involved only kindergarten through grade 3. Then, each subsequent year another grade level was added. In other words, the third grader that had optioned to Westwood would remain there for the fourth grade and the following year for the fifth grade and so on, so it was progressive upward by grade level in successive years.

Q. Which way did the option run?

A. It was originally part of Jackson and was optioned to Westwood and I think the records from the Board minutes will show that later on it was changed and made a part of Westwood with an option to Jackson.

Q. Continuing east through the city and crossing the river, the next one we come to is an optional area between Lincoln and Horace Mann Elementary Schools, is it not?

A. Yes. That area was made optional in 1957 and again by the request of parents, and it probably would be farther to Horace Mann than to Lincoln, but yet it is an area right at the intersection of Wayne and Wilmington Avenue, and Wilmington Avenue would be a direct route to Horace Mann. To get to Lincoln, they would have to wind in and out and turn course, so directness and the fact it was practically equadistant would be involved.

Q. The next optional area as we move east is between Cleveland and Belmont Schools, is it not?

A. Yes. That is a triangular effect. It is an area between Watervalete on the south and Wayne Avenue on the north, and Watervalete probably has greater traffic than Wayne Avenue, but they were trying to encourage the youngsters to go to Belmont, but they had the option of going to Cleveland if they so desired, but either way they had to cross a main thoroughfare.

Q. What was the reason for not making that an area in one or the other district with hard lines?

A. I think the attendance pattern there probably was the major factor or convenience to the people living in the area

and using the criteria to determine a hard line, it probably wasn't there, no justification to say this is that much closer or that much farther and so on.

Q. Continuing then to the east, the next optional area would be one between Grand and Belmont Eelementary School, would it not?

A. Yes. That area again, the distance factor is probably about the same between the two schools and again it was convenient to the parents in the area with not justification to refuse their request.

Q. And finally we have an optional area between Lewton School and Eastmont, I believe, isn't it?

A. This was an unusual situation in that it involved two principal streets, Quimby Lane and Shafer Road, that exited to the north on Xenia Avenue, or U.S. 35 and they were not completed to the south, so that they would access to the Eastmont School. So they would have to exit from this area to the north and then go either east or west, east of Lewton or west to Eastmont, or vice versa. Excuse me.

West to Lewton and east to Eastmont.

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Q. Is that Eastmont and Kemp?

A. Eastmont and Kemp. Not Eastmont and Lewton. This isn't Quimby Lane then.

Well, even so the people in this area here have – excuse me. I should stand on the other side.

The people in this area here would have to go around this way and there is no exit from this residential pattern to Eastmont.

These people can come across this way.

These people have no access to this except going in and around about way. There is Woodman Drive, which recently is a very highly traveled street. That formerly had not been cut through. But now that is cut through and it is almost like a peripheral highway.

So I would say there it would be two factors: Hazard and accessibility.

Q. Now, if we recede into the past during your tenure with the School Board, there were at least up until 1969 when the Stivers boundary changed, two other optional high school areas were there not, between Stivers and Wilbur Wright and Stivers and Belmont?

A. Yes, sir.

Q. And can you tell me when those options were created and why they were not created with hard lines?

A. Well, they were created in 1956 with the opening of Belmont, and the Belmont area relieved the Stivers School District more than Wilbur Wright, and the optional area between Stivers and Belmont was at the extreme south and accessibility to either of the schools was difficult.

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Q. Let's go to elementary schools prior to 1972, and during the period that you were with the School Board, there was at one time an optional area between Fort McKinley and Fair port, was there not?

A. Yes, sir, and that was two factors involved in that: Accessibility and hazards.

Q. What were the nature of the accessibility and hazard problems that caused that to be drawn as an optional area?

A. The difficulty to getting to Salem Avenue on the east. They would probably have to go west to Gettysburg, and the crossing at Gettysburg and Salem Avenue is quite a difficult crossing.

Q. At one time there was also an optional area between Fairport and Fairview Elementary Schools, was there not?

A. Yes. That was part of Fairview, made optional to Fairport. Again it was the Salem Avenue traffic hazard.

Q. What was the date that that was created?

A. I have 1960.

Q. Now, at one time there were two options, were there not, between Fairport and Cornell Heights?

A. Yes. Again it was in 1960, and this was new residential development where accessibility was definitely a factor, because there were not through streets and it was hoped that eventually development would continue those streets so that there would be more direct access.

Q. At one time there was an optional zone between Jefferson and Cornell Heights, was there not?

A. The only difficulty there was that these two squares south of Cornell were about three blocks long. It was between Princeton Park and Cornell, and on Oxford Avenue to the south – the first through street south of Princeton Park, and it extended from Everett Drive to Vernon Place to Windsor to Rosedale. But these three very long blocks north of Princeton Park had no dividing line between them in order to make them equidistant. There is no natural line. You just have to follow maybe a property line on this side of the street and a property line on the other side. So since it was a distance almost equidistant, it was made an optional area.

Q. What about an optional area that existed between Jefferson and Brown at one time? What was the reason that was made and why was it made without hard lines?

A. Well, there again it was a crossing at Cornell and Salem Avenues. That was a hazardous crossing.

Q. What about the optional zone that formerly existed between Jefferson and Edison?

A. This area involved the – again, I shouldn't take time to name streets, but it was about equidistant and more direct to Jefferson and more roundabout crossing the railroads and so on to Edison.

Q. What about the optional area that once existed between Westwood and Gardendale? When was that created?

A. That was in 1957.

Q. What was the reason for drawing that as an optional area rather than with hard lines?

A. Well, this was one of those unusual situations where the boundary line was drawn close to Westwood in order to give it as much relief as possible, but also recognizing that

Gettysburg Avenue, which they would have to cross to get to Gardendale School, was a four-lane highway.

Q. Were there any other access factors in that area between the optional area and Gardendale School?

A. Well, they weren't insurmountable, because they were so close to the school, even though they had to wind their way around to get there, it wouldn't have caused that much extra distance.

Q. What about an optional area that formerly existed between Residence Park and Jackson for students at the Veterans Administration?

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A. The north boundary of the Veterans Administration was Third Street, which was the south boundary of Residence Park. The east boundary of the Veterans Administration was the west boundary of Jackson. And I think it was in 1951, the Board of Education passed a resolution that if there were elementary school children residing with their parents on this facility they would have the option to Residence Park or Jackson.

Q. Was there formerly an option between Greene and Garfield Schools?

A. Greene and Garfield?

Q. Yes.

A. I'm not aware of that.

Q. Was there formerly an option between Irving and Willard Schools?

A. Yes.

Q. And there were three options in a row there, weren't there, on kind of a diagonal?

A. Yes. They involved Willard and Irving, Willard and Whittier, and Miami Chapel and Whittier, and those were three triangles, two of which were bounded on two sides by railroads and the third was bounded on one side by a railroad.

Q. And what was the reason that they were set up without hard lines?

A. Because of the hazard giving the option not to cross the railroad.

Q. Then, as we move on through the city, there was at one time an option between Cleveland, Lincoln, and Franklin Elementary Schools, was there not?

A. That was caused by the construction of Highway 35 and its exit ramps which changed the accessibility factor materially.

Q. What was the reason for not drawing that one with hard lines?

A. Well, I think it was left to the pleasure of the parents how they were going to instruct their children to go to school because of the difficulty of access.

Q. Now, at one time were there some elementary school optional areas involving Orville Wright Elementary School?

A. Orville Wright and Kemp, the eastern area I have it as approximately equadistant, and the southern area was accessibility.

Q. Was there any reason for drawing those as optional areas rather than hard lines?

A. Again, there is no justification to refuse the request of parents.

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Q. Mr. Curk, you testified this morning you obtained the racial counts which are found in PX-104; that is, the 1940 to 1951 racial data, that you obtained these from principals' reports?

A. 1940 to 1951?

Q. I think 1947 to 1951. I am sorry.

A. Well, I don't remember the report, Mr. Lucas, but there is an attached document to that which indicated that I did get it from the principals' report as I gave in direct testimony this morning.

Q You said that the principals reported at the end of the year and one of the questions on the principals' report to the State Department of Education was the number of Negroes enrolled in that particular school that particular year.

A. That's my understanding, yes.

Q. So, from 1947 to 1951, at least, the principals' reports carried that information to the staff, is that right?

A. Evidently. I don't remember it, but evidently from that document.

[R. I. 1921-1922, Vol. 19] Q. And you were present and, therefore, knew what the decision-making process was during that period of time?

A. Normally I was present, yes, sir.

Q. And I believe you also stated that after Dr. Goff took Mr. Armstrong's place – was it in 1964?

A. I think that was the year.

Q. But you were not as involved but was kept advised of any major decisions and memorandum; is that correct?

A. That's correct.

Q. And did you go to the Parker School?

A. I did.

Q. Maybe I am embarrassing you, but can you give the year you went to Parker School?

A. Well, let's see. I will have to count backwards. It would be in the year 1919-1920, I think.

Q. Was Parker a city-wide ninth grade school?

A. I think it was at that time.

Q. So, just one grade was in that building?

A. That correct.

Q. Do you recall how many students that involved at that time?

A. I have no way of knowing.

Q. Was that building still in use when you came with the System as an Administrator?

A. Yes, it was.

Q. Now that I have referenced that, can you give any idea of the size of the building in terms of capacity?

A. Well, it was put to a different use, of course, in subsequent years, and that would probably decrease the number of students that it could accommodate due to its different usage, but I would still hesitate to hazard a guess.

Q. But it was the co-op school for Patterson; is that correct?

A. That is correct.

Q. Now, this was a city-wide ninth grade. Were there any other ninth grades in the System that you know of?

A. Not to my knowledge.

Q. And that was part of the junior high setup that the System had back then?

A. This is before the junior high, sir.

Q. That's right. Junior high started in the '20's?

A. That's correct.

Q. O. K.

Were there attendance boundaries for other schools at that time? I take it the attendance boundary for the ninth grade was the entire city limits.

A. Yes, sir.

• • •

[R. I. 1928-1931, Vol. 19] A. Before I could answer that question, the foreword to that table says "The following table is based upon the present rating capacity of each building", and so forth, Pages 8, 9, 10 and 25, I guess it is, of this survey.

Q. The next paragraph though says "The estimated number of pupils from Mad River Township was based upon estimates secured from the county superintendent's office and our own experience table."

I guess my first question is, at the time this report was prepared were the Mad River children coming in to those schools?

A. Evidently so, yes, sir.

Q. And am I reading the table correctly to say that 636 was the number and that the numbers that appear thereafter are the projections that you are making?

A. I think that would be correct.

Q. Do you know whether or not the enrollment patterns actually continued as projected or did they drop off or cease?

A. Are you talking about the Mad River students?

Q. Yes, sir.

A. I don't remember whether I continued updating that attendance record or not.

Q. How long did they continue to utilize space in those schools?

A. I can't answer that question either, because it is recommended and I think whatever the year was, I think they were in the process of erecting their own high school building, and it wasn't two years after that they stopped bussing their children in.

Q. They provided the bussing into these schools?

A. Oh, yes.

Q. And did this affect in any way your capacity decisions in terms of having to add the capacity of various schools because of this influx of students?

A. No. When you say various schools, you are referring to what, sir?

Q. Assume, and I'm trying to read your table, and if I am wrong please correct me, but this Mad River assignment applies to Kiser, Wilbur Wright and Stivers only.

A. And it is a heading which applies to their new high school.

Q. This says available space in high school buildings, and the last column has Mad River High School pupils, so I assume that that affects those three schools and only those three schools?

A. Well, the projection included the new high school. That's what I'm trying to tell you. There is a column for the new high school, and the other columns would be adjusted accordingly.

Q. And you are in effect including in your projection of high school needs at that time building and space then for these Mad River Township children?

A. No, I don't think so, bebcause I think as I read trying to prepare my answer for you, on Page 8 I said excluding the Mad River Township pupils. I think that is on Page 8.

Q. "They do not include any large number of tuition

pupils such as those that we receive from Mad River Township."

The question is, does the table in Part V, where you have those additional numbers in the right-hand column, is that reflected at all in the utilization figures that you have for those other schools; Kiser, Wilbur Wright and Stivers?

A. No. For instance, just to check, in 1955-56, 225, 330 would be 555, and 289 would be 844, and 714, you come up with your 1522. Well, it's blurred so that could not include the 763 that is out to the right-hand table or column.

Q. Well, this column says that is available space, and I take it that means in 1955-56 there were 225 spaces in Kiser, 300, and it looks like 360 spaces in Wilbur Wright, and 289 spaces in Stivers; is that correct?

A. I think that would be correct.

Q. All right. That indicates that you have whatever the sum of that is in spaces available as of '55-56, and then you are projecting a new high school to add a total of 714 spaces, is that correct, because it doesn't exist. You projected it.

A. Yes.

Q. All right. So that the sum of the total, in the second to last column, would be the sum of extra space available, assuming the new high school was built?

A. That's correct.

Q. So that you have that much extra space, 1588, or maybe 1533. It's a little blurred.

A. Yes. Projected for that particular year.

Q. There would be that much extra space, and you projected you would have 753 Mad River pupils for that period, didn't you?

A. Correct.

Q. Thank you for clearing that up.

Now, in your deposition you told Mr. Diamond that you never considered race whatsoever.

A. In projecting enrollments, that is absolutely correct.

• • •

[R. I. 1953-1954, Vol. 19] Q. Are you familiar with what areas that you were doing transportation in before you retired?

A. That was not my domain, but I was familiar with some of them, yes.

Q. Can you give me several illustrations?

A. Well, in the northeast was probably most difficult. Formerly, the northeast area was all transported to McGuffey, Webster and Allen, and then it was reduced to Webster and Allen and that, of course, was again an accessibility pattern as well as distance, and then in the extreme northwest, the people out around the extreme upper left of the map.

Q. Can you refer to it by school zone now?

A. Well, it is in the Shiloh zone.

Q. Thank you.

A. And those people were bused into Shiloh.

Q. They would have gone to Meadowdale at that time?

A. Well, the period I am talking about, they went to Fairview.

Q. Was there any transportation down in the southeast area?

A. There was at one time transportation in the Wogaman area when Wogaman was overcrowded and the bus went down in the southern Harrison Township area.

Q. When Wogaman was overcrowded what period would that have been, approximately?

A. Well, I think that would cover a span of years. I don't know.

Q. Fifties or sixties?

A. I am referring to early '50's before Highview was constructed, Highview being constructed it had a tendency to relieve Wogaman, and then –

Q. Highview –

A. Do you want me to continue?

Q. Highview, I believe, was built in 1951.

A. I think so.

Q. All right. You say that the Wogaman children were taken to where?

A. Well, the Highview District was a part of the Wogaman District at that time, and Wogaman was overcrowded and pupils were bussed, I think, to Irving.

Q. You mentioned something about Harrison Township.

A. Well, the southern part of that area at that time was not in the city, but a part – now wait a minute. It might have been, but it was formerly southern Harrison Township. Maybe it was in the city at that time. I can't say for sure.

Q. The Highview School when it opened was only one percent black?

A. That's right.

Q. Were the white children being taken to Irving?

A. Well, I presume so.

Q. Instead of going to Wogaman which was overcrowded and which was black, they were taken to Irving?

A. That's right.

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Z. TESTIMONY OF WILLIAM GOFF.

[R. I. 1959, Vol. 19] Q. Try to keep your voice up so I can hear you way back here and let's start out by asking your name.

A. William Goff.

Q. Where do you live, Mr. Goff?

A. In Dayton, Ohio, 918 Debbie Court.

Q. What is your occupation?

A. I am Assistant Superintendent of Schools for Student Development.

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Q. How long have you held that position?

A. Just over eight years.

I have been Assistant Superintendent for four years. I have been in Dayton for eight years.

Q. Can you give us your educational background?

A. Yes. I attained a Bachelor's Degree in Psychology at

Ohio State and Master's Degree in Psychology at Ohio State University and the Doctorate in Exceptional Children Guidance and Educational Administration at Ohio State.

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[R. I. 1962-1963, Vol. 19] Q. What had been the practice of the Board with respect to transportation of students insofar as distances are concerned?

A. You mean prior to this policy?

Q. Prior to and after 1966.

A. Well, after 1966 the policy as it is stated here, did establish a 1.2 radial distance from an elementary school, that is outside the 1.2 mile, being a transportation area.

It also set up a series of criteria for high school transportation, too. The State law, as you are probably aware, does require only that students who are in elementary schools be transported if they are two miles or more from their school of attendance. This was at this time.

Q. All right. Was that the practice and policy of the Board?

A. The practice of the Board made use of the permissive part of the law which allowed over one mile from the school. So the 1.2 mile policy that was established here fit into the practice that was being exercised in 1966.

Q. What were the financial implications of the Board's transportation policy in the '60's?

A. Well, as a flat rate school district, the district received nothing for any kind of transportation of regular students.

There was reimbursement for handicapped children attending Gorman School for Crippled Children.

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[R. I. 1998, Vol. 20] A. The primary limitation in setting up the sites was the one and a half mile direct travel distance which was the transportation policy so that the youngsters could walk to the school rather than be involved in transportation. There were a number of other sites suggested, were there not? If I can name a few, tell me if I am correct. Jane Addams was suggested as a middle school, was it not?

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Q. Jane Addams, Meadowdale, Brown, Emerson, Kiser, were those some of the other schools?

A. I think some of these were identified in an Ohio State study prior to the time that we finally set them up, yes, sir.

Q. Emerson is actually a former junior high school; is that correct?

A. I believe so.

Q. And that would make it particularly suitable for conversion to a middle school?

A. Yes.

• • •

[R. I. 1966-1976, Vol. 19] Q. Try to keep your voice up, Dr. Goff, because the Reporter also has to get what you say.

A. I see. All right.

The middle school, we looked for possibilities of middle school placement on the east side, on the west side, and in the north part of the city.

We had the assistance of Ohio State University through a grant that they had to put youngsters on large maps so that we knew where they were, since we do not have a central file system right now on every youngster, and with these maps we establish the individual schools in three sections of the city using what buildings we felt could be most adaptable to a middle school, and those who could best handle the eight to five youngsters.

Q. Was there any new construction involved?

A. No, sir.

Q. What students interracial experience, if any, were affected by the establishment of the five middle schools? Maybe you had best take them one at a time.

What about Orville Wright?

A. At Orville Wright, as far as a racial integration at that school, this was improved for the six to eight level by bringing youngsters who were formerly attending Washington Elementary School.

Franklin Elementary School, nothing was accomplished there as far as any racial improvement.

At Kemp School, the racial improvement there as noted on this exhibit, was due primarily to a housing development, not to a change in the boundary.

And in Washington School, Washington Elementary School, this did bring more white youngsters into Washington School. It brought white youngsters into Washington School who had not previously been with black children at this particular age level, and of course, it took out some of the older black children to go to Orville Wright.

Q. All right. And are the various mixtures and nonmixture of the races in the other middle schools shown on this Exhibit AW?

A. Yes, they are.

Q. Was there any reason for not establishing more than these five middle schools?

A. Well, it was felt that to begin with, with five middle schools, it was a pretty big bite in itself, and so basically this was an arbitrary decision, really, not to go into the whole district at once.

We were also introducing the individually guided educational program into the middle schools and into their feeder schools. So this, too, meant another kind of planning and reorganization for those schools.

Q. What is your relationship to the freedom of enrollment program that has been effected in the Dayton School System since its adoption in May of 1969?

A. The associate director for student relations administers the program itself.

I am his direct supervisor, and we work together when problem situations come up in the interpretation of the policy or how we would administer it.

Mr. Carroll is directly responsible for that, but he is a member of my staff.

Q. All right. The Court is already fully familiar with the policy and the various priorities in it.

Could you tell us just how the mechanics of the freedom of enrollment works? Are there cutoff dates or when is enrollment in the program effected?

A. Well, there is a time, and it has been twice a year enrollment dates, when youngsters may make applications for freedom of enrollment.

Administratively we would like to have a cutoff date simply to be able to clean things up. Our practice has been that we do accept youngsters even right on to until the time that the second semester begins, or the first semester and the fall begins. So we actually have no cutoff date. We have a beginning enrollment date when youngsters and their families are asked then to send their application in.

Q. How are enrollments projected for the freedom of enrollment program?

A. The guidelines that Mr. Carroll and I worked together on were simply to contact the principales of schools where youngsters had requested transfer and to get a number from those schools at various grade levels where the principal felt that he would have room. There is a comparison of this with the tentative organization that the principal must submit to the staff development department in the spring in order to plan for teachers for the coming year.

Q. What is the tentative organization for each school and how is it developed?

A. I guess a staff development person can answer this better, but primarily the principal and his staff must assess and make projections of their enrollments, relate this to their classroom space, and the number of teachers they then have, and then present that particular relationship to the staff development department for review.

There are various criteria established in Title I schools as

opposed to non-Title I schools. That is, the ratio, and I'm sorry, I don't remember these, but they differ for a center city school as oposed to a suburb, that is, the Title I being a lower pupil-teacher ratio. So the principal then uses this figure to estimate how many teachers he is going to need for the coming year.

Q. All right. And is the capacity insofar as freedom of enrollment is concerned tied in with the tentative organization worked out for each school by these various criteria?

A. Well, the principal himself is normally – for instance, right at this period of time, for transfers, he doesn't have a tentative enrollment. We are asking him if he has a vacancy for second semester. For the second semester he has a tentative enrollment, or a TO worked out, so that we can make some judgment as to whether or not he does have room in relation to what he is asking for as far as teachers are concerned. But we have depended upon the principal to give us this figure.

Q. Are you aware of anything to indicate that the freedom of enrollment program has not worked in a fair and impartial manner for all students in the system?

A. No, sir, I'm not.

Q. According to Defendants' Exhibit AD, in the present school year, there are only 178 students out of more than 50,000 in the System who were denied transfers under the freedom of enrollment program because of classroom space.

Are those figures and similar figures in the other exhibits concerning freedom of enrollment accurate to the best of your knowledge?

A. Yes, they are.

Q. What are hardship and emergency transfers, Dr. Goff?

A. These are individual kinds of situations which develop with a child or a student in a school which are a program in his adjustment or in his making progress in school, and each of these individual situations is reviewed to see whether or not it is apropriate to make any school transfers or whether

any other kinds of changes need to be made to assist that youngster in his school development.

Q. Let me refer you to Plaintiffs' Exhibit 16, which summarizes the hardship and emergency transfers for the present school year.

Do racial considerations play any part in hardship or emergency transfers, Dr. Goff?

A. No, sir, not within this policy at all.

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Q. What are special education transfers?

A. These are youngsters who are evaluated by school psychologists in relation to abilities, in relation to achievement, performance in school, and if eligible for state standard self-contained classes for educable mentally retarded, they are then placed into such a class with the parents' permission.

If there is no such class available for a particular age range at a school, that youngster is transferred to the nearest school where there is such a class available.

Q. Do racial considerations play any part in such transfers or assignments?

A. No, sir, they do not.

Q. What are disciplinary transfers?

A. I would assume the question really parallels the hardship and the passionate kind of transfers that does involve an evaluation of a situation in which a youngster has been involved in a discipline kind of way.

And if it is indicated that a school transfer would be helpful in improved adjustment for this youngster, such a transfer might be made.

Q. Do disciplinary transfers occur both within and without the context of the freedom of enrollment program?

A. Actually, they are without the context of the freedom of enrollment program. Disciplinary transfers are not considered freedom of enrollment transfers.

Q. And what are the criteria by which such transfers would be made?

A. Well, there would be a number of these. Actually we are looking at the child's immediate kind of adjustment in a particular kind of situation. But before a transfer would normally be made, we would also be expecting some other kind of supporting help for that youngster really outside the school system in most cases.

A caseworker from the Family and Children's Services, from the Juvenile Court, a continuing treatment program with a child guidance center, a children's psychiatric hospital under psychiatric treatment.

We look for something to give support to the child beyond just a matter of his being transferred from one school to the other.

Q. Do racial considerations play any part in these kind of transfers?

A. No, sir.

Q. Now, during your tenure with the Board, there have been a few special transfer situations involving Jefferson, Edison and Westwood Schools, have there not?

A. Yes, sir.

Q. I'll refer you to Defendants' Exhibit BA.

Q. Now, the Court is already familiar with these three situations, I think, so I will try to confine my questions to just certain aspects of them.

First of all, can you tell me the circumstances that led up to the Jefferson transfers and what caused those transfers to stop?

A. The Jefferson transfers were due to the crowded situation on that Jefferson campus.

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Q. Were the Westwood transfers a situation similar to the Jefferson transfers?

A. Yes, sir.

Q. And on the transfers from the Edison students following the Edison fire, was there a meeting of administrators the week following the fire, in April of 1968?

A. Yes, sir, there was.

Q. Were you present at that meeting?

A. Yes, I was.

Q. Was any plan adopted at that meeting regarding the assimilation of those students and the schools to which they were transferred?

A The plan adopted for the remainder of that school year was to transfer the teachers with the students to the schools to which they were assigned.

Q. Did the administrators the week following the fire adopt any plan with regard to what would be done the following fall?

A. I know of no plan being adopted for the following fall. My impression was that we were dealing with an immediate situation at this time and we felt that these youngsters should not be disrupted from their normal class.

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[R. I. 1991-1994, Vol. 20] Q. You were with the system in 1970, is that correct?

A. Yes.

Q. Are you familiar with the transfer of two children named Fielder (spelling) F-i-e-l-d-e-r, from Roth to another school in the system?

I believe it resulted in a law suit in which the Dayton School System was involved?

A. Yes, sir. I remember the case, not the details.

Q. I believe these students were Rob and Beverly Fielder, who were attempting to transfer from Roth.

Do you know what school they were attempting to go to?

A. No, sir, I don't recall specifically.

Q. Do you know what happened in that case?

A. As best I can recall, the case involving the girl in the family was brought to a preliminary kind of hearing in court.

Q. Let me ask you and see if I am correct.

The School Board did oppose the transfer of the students as

had been requested by the parents, and the parent filed suit, is that correct?

A. I'm sorry, Mr. Lucas. I have not prepared to look up that particular case. I just don't recall.

Q. I have a newspaper clipping.

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Q. Does that refresh your memory somewhat?

A. Yes. Thank you.

Q. Dr. Goff, am I correct that the students was, after the litigation in court, subsequently given a medical transfer from Roth?

A. Yes, sir. That appears to be the way that it is, as I recall from this.

Q. They did attempt to transfer without citing a medical reason, the Board denied it, and after the litigation I think the Board's possession was sustained, is that correct, but the student was subsequently permitted a medical transfer?

A. No, sir. As I would recall it from the information you have given me here, it was a decision worked out with the court that a medical transfer would be an appropriate kind of thing in this situation. There were two youngsters involved, and the girl was given the medical transfer on the basis of medical information submitted.

Q. And is it your understanding that that medical information was not submitted initially, is that correct, with the application?

A. As best I can recall, yes, sir.

THE COURT: Mr. Lucas, before you leave this, may I ask the witness one or two questions.

What was the Board's reason for denying the transfer, Dr. Goff?

THE WITNESS: Well, I would assume there was no specific reason for it, Your Honor.

THE COURT: I though that the School Board operated under freedom of choice.

I am aware of the priorities, by the way, but I am curious as to what reason was assigned for the refusal to permit this child to transfer?

THE WITNESS: Well, as best I can recall it would be simply because they weren't the girl nor the boy, qualified under the freedom of enrollment to be transferred.

THE COURT: They sought to transfer from Roth to what school?

THE WITNESS: Again, I believe it was Fairview, but I am not sure whether that was in there or not. It was to another school other than Roth, though.

THE COURT: Were these students black or white?

THE WITNESS: White.

THE COURT: You may proceed.

Q. In fact, there have been a number of medical certificates given for students who sought transfers for medical reasons, is that correct?

A. Yes, sir. Medical reasons would be a reason to authorize a transfer.

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A.A. TESTIMONY OF LORANA MADELINE DORSEY.

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[R. I. 2013, Vol. 20] Q. Was there a swimming pool?

A. Yes.

Q. When you were there, how many black students were there? Were there a lot or a few?

A. Not over 25, as I recall.

Q. All right. Were black students permitted to use the pool?

A. No.

Q. Was there a meeting between black students and the representatives of the school?

A. There was.

Q. And what was the purpose of the meeting?

A. To ask the reason why we weren't permitted to use the swimming pool. They would take it under consideration they said, but nothing came of it.

THE COURT: Mr. Lucas, I would like a date.

MR. LUCAS: Yes, sir.

BY MR. LUCAS:

Q. When did you graduate from Stele?

A. 1930.

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VIII. RELEVANT PARTS OF THE RECORD OF THE REMEDIAL HEARINGS HELD IN DISTRICT COURT IN FEBRUARY OF 1975 (R. II.).

A. TESTIMONY OF ROBERT O. GREER.

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[R. II. 156-157] Q. What advice did you give with respect to the subject first of just pairing of schools?

A. Our advice after consultation with regional specialists and others was that pairing in the city of Dayton would seem to be not appropriate at this time in 1975.

Q. And why is that?

A. You are quite familiar I am sure, Mr. Lucas, with the different enrollment patterns and enrollment fluctuations since 1968 and since 1971 and 1972. The Dayton School System has lost a little over 10,000 pupils, a little over 1,500 in the high school grades and the others in elementary. That is one complete high school. You could pull out of the other 7,500 several elementary schools.

When you look at this loss pattern and we looked at the proximity of buildings now existing, you would have to have close proximity of different types of buildings racially in order to make the kind of switch and pairing that is necessary.

Q. You are assuming only contiguous pairing; is that correct?

A. No. Do you want me to complete that?

THE COURT: Please continue.

THE WITNESS: It was our feeling that if pairing were done with contiguous kinds of pairing, that this, then, would require a number of boundary changes, a number of pairing changes within rather rapid periods of time. The turnover rates in most of the big cities including Dayton in pupil population is very rapid. You may find some classrooms that change completely during a grading period because of mobility of the population, black and white.

Therefore, it seemed unwise to us to advise at this time using a method that has not been working too well either in other systems during the last five years or in the city of Dayton based on the enrollment pattern.

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[R. II. 182-87] Q. Now, if I understood your earlier testimony correctly, you have indicated that in your opinion one of the problems with pairing and similar concepts in Dayton arises from the mobility of the Dayton population.

A. Right.

Q. With respect to mobility within the school system itself, could you explain to us what you mean?

A. This is what worried us when we listened to the various reports and went back over our mobility excuses over the past five years at least. I don't know whether people in big cities like Dayton move because of jobs or housing or because they are forced to move because of absentee landlords or what. That wasn't our purpose to find out, but in fact children and parents do move frequently in a city such as this and they are moving frequently here from one area to another, and as I said earlier, I think, to Mr. Lucas in response to one of his questions, you may have an entire room in a grade level change every six weeks.

Now, this is an awful thing for a teacher to face who doesn't understand all these varied kinds of people without staff development, and it is an awful thing to try to pin down enough to say let's pair this building with this building right across here and in a number of cases as you look at Dayton, you are going to be pairing an all black building with an all black building and that is not going to help anything or if you pair it with a building that may be all anglo in certain sections, you are pairing poverty with poverty and that doesn't answer any question.

It was our belief that the system should look at the methods which would bring together a multi-ethnic and multieconomic kind of grouping with their offerings or at least offer some

kind of method which would bring more of different kinds of people in different economic levels together so they could all learn about everybody's contributions without pairing poor and poor or black and black.

I don't know. Did I answer your question?

Q. Yes. I think you did.

You also discussed a different type of mobility which was mobility out of the school system itself, and could you explain for us what has been the pattern in Dayton and in similar communities with regard to that kind of mobility?

A. Well, in any system where you have over an extended period of time confrontation and lack of confidence and credibilty of the system, and in credibility of the system I don't mean to be derogatory about Dayton. This has happened in every big city in this country where people have lost confidence in State Departments of Education as well. They say none of us are doing anything. You can immediately start looking for the flight of people to the suburbs, the greener pastures, and at first we looked and we said okay, white is running. That was the common term, and we took a good hard look and we found out the affluent black was running too, and we were all running from the poor and from those who we considered less learned. We were running from the places where industry had decayed in a city. We were running from where jobs were different and we all seemed to want to find the place that was perfect for us on the fringes of a city.

First you moved to one edge of the city and then completely out of it and if you follow the pattern in Dayton, it is just like every other big place where this has gone on for a period of years.

Now, if the affluent whites move and the affluent blacks run either outside or to parochial schools or some other place, you have left a city of poverty and whatever. It can be black, it can be Appalachia, or anything else, any kind of mix, but you just have a poor city and a poor school system.

What we were trying hopefully to discuss with the School Board when we met with them and the Administration was

get your minds on building the kind of quality that will hold all the people in the system and then if you have got to build buildings to get them back together, then build a better rat trap and call the population back. You might as well do it as a school system because the businessmen are sitting out there waiting until the whole thing decays and they will buy it up and build up the most beautiful kind of city all over again and maybe the same folk that are in it won't even be there.

I apologize, Your Honor.

THE COURT: To the contrary Mr. Greer, in a problem that has complexities beyond my ability to understand, you have been very helpful.

You may proceed, Mr. Greer.

BY MR. GREER:

Q. Has the experience with certain types of desegregation plans including pairing techniques been to accelerate this movement out of the inner city process you have described?

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THE WITNESS: As I answered before, in specific instances, pairing just wouldn't work because of the types of youngsters and economic level of the areas and the fact that usually in inner city you will find a number of elementary schools have been built as the black population increased in the inner city. Another elementary school was stuck up to take care of the overload, so you had so many black schools until there is hardly anything to pair them with, and if you did pair across, it is with another elementary of poverty over here at the other racial level that happened to get stuck on the edge of that ghetto.

The poor are always there with us, and I don't care what color they are, cities have just stuck them in these situations, so the level and quality of educational offerings is not good for white or black.

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B. TESTIMONY OF GORDON FOSTER.

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[R. II. 199] Q. State your full name and occupation, please.

A. Gordon Foster. I am a professor at the University of Miami in Coral Gables, Florida.

MR. LUCAS: Doctor Foster's qualifications have already been tendered to the Court.

THE COURT: Yes.

BY MR. LUCAS:

Q. Doctor Foster, have you had an opportunity to examine Defendant's proposed plan of desegregation?

A. Yes, I have.

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[R. II. 223-227] Q. Do you know what the approximate cost of the total magnet school program has proposed in the Board's plan was?

A. As I recollect, it was around three or four million dollars.

Q. I believe the record will speak on that.

Turning your attention to the other elementary magnet programs, can you identify them?

A. There were three magnet programs. One was modern foreign languages at Carlson which would include three blocks in a day in terms of timing with approximately 120 children in a block which would make a potential of 360 students. I believe this was intended to be held on opposite days or opposite schedule from the science business so that it wouldn't interefere with that.

There was a business education skills program at Huffman, and this was for grades 6, 7 and 8 which would encompass approximately 300 students, and the third program was at Kemp which was a career motivation center which was anticipated to interest approximately 220 students at the fourth

and fifth grade centers for two two-hour session a week. This is really very much like the current career opportunities programs that are being offered all over the country.

Q. All right. Is it your understanding that these are all part-time programs?

A. That's correct.

Q. And that the base enrollment in each school at Carlson and Huffman would remain the same?

A. That's correct, and the children would be transported in.

Q. Is it your understanding that these programs would use only the excess capacity at the respective buildings?

A. Yes.

Q. Have you examined the freedom of enrollment policies and the results of the freedom of enrollment and transfer policies in the plan?

A. Yes, I have.

Q. Can you describe those results?

A. Well, as I understand the plan, there were two basic plans that had to do with freedom of enrollment or open enrollment. One was called open enrollment which was for high schools only, and that was started just a year ago in January of 1974, and to the best of my knowledge, I found no reports of how many children moved for open enrollment in this program in a desegregated section. There were no numbers reported at all by race.

Q. Is that the one where they have an enrollment period prior to the opening of school?

A. I understand a child picks three choices, a first, second and third choice and he runs through a randomized process of some sort and if he doesn't get in that, why, then, he is assigned to his nearest high school, capacity being considered.

The freedom of enrollment is essentially what we call a majority-minority transfer program, and the figures for that are given in Exhibit A to the Board's plan. Well, it is really Exhibit B. The figures are 391 in the high school for the

1973-74 school year, and a total of 346 at the elementary and middle schools for that year. Those figures which add up to 737 coupled with carryovers from prior years of 613 and a second semester figure for 1973-74 of 258 give a total of 1,608 students in schools other than their neighborhood schools.

Q. How many of those were black children going to predominately white schools?

A. Well, I have a racial breakdown of receiving schools only for the one year of 1973-74, first semester. That was the 737 figure.

The way I read the data, all but nine of those would be black children going to white schools which I believe was your question.

Q. Viewing the entire desegregation proposal of the Board of Education proposal and the number of children affected by such a plan, do you have an opinion as to its effectiveness as a plan of desegregation?

A. Yes. My opinion is that basically it is a curriculum plan rather than a desegregation plan, that something like a total, a maximum of 6,400 part-time and full-time students could be affected by this plan, and many of those would only be in partially desegregated situations at best. Out of this approximately 6,400 maximum figure, about 3,000 would be what we might call full-time desegregated students. Those would be the ones at Stivers-Patterson Co-Op and Kiser and Miami Chapel Elementary School.

Secondly, there is no guarantee of the desegregative effect we all know of this program. I think some of the programs are likely to achieve some desegregation although minimal and some will maybe strike out.

Based on past experience in other systems, one would have to be somewhat less than optimistic about the total effect. I think we have mentioned the fact that in the schools where there is just a program such as at Roth, Dunbar, Huffman, Carlson and Kemp, desegregation is essentially not desegregation. It is just a group of kids coming in in an intact group.

Q. In a what?

A. It is a group of pupils being transported into those schools in an intact group, sometimes in smaller groups, but always staying apart from the rest of the school program.

• • •

[R. II. 2-8] Q. Doctor Foster, at the request of the Plaintiffs, have you prepared a desegregation proposal which has been submitted to the Court and to the Defendant School Board?

A. I have, yes.

• • •

[R. II. 231-233] Q. Did you have that as any sort of inflexible standard or was that a goal?

A. No. I think you will find in the estimates of the individual schools that some of them got a little bit outside that range. The object, in other words, was not to racially balance a system but to remove the racial identifiability of any individual school insofar as possible. There is quite a difference. The techniques as in most desegregation plans were to take the easier things first and see what that would do.

The way the demographic situation rests in Dayton, there are very few instances where you can redraw zone lines between contiguous schools and effect any degree of desegregation. The schools that are in the buff area between the white population and black population generally are already in a desegregated mix, and then when you get farther out from that center of desegregation, you run into a situation where you are contiguous no longer and at that point you need to consider pairing or clustering.

As was stated this morning or at least partially stated, clustering or grouping is an extension of pairing. Pairing is essentially two schools put together. A clustering or grouping can be two or more.

In a system that is approximately even in racial makeup,

pairing works very well if capacity is the same because you can pair one 50-45 per cent black school usually with a white school on the opposite side, only it would be like 90 per cent versus 90 per cent.

Where you run into clustering more than two schools, you usually do it because you have a differential in the capacity which necessitates putting more than two schools together to come out.

So, essentially, the plan developed a serious of elementary clusters. It left four schools the way they are and the original plan recommended we close three schools, and I have an amendment to that if we want to discuss that so that the plan would not involve any closing of elementary schools.

• • •

IX. RELEVANT PARTS OF THE RECORD OF THE REMEDIAL HEARING HELD IN DECEMBER OF 1975 AND JANUARY OF 1976 (R. III.).

A. TESTIMONY OF WILLIAM M. GORDON.

• • •

[R. III. 18] Q. Could you state your name, sir?

A. William M. Gordon.

Q. And what is your employment?

A. I am an Associate Professor of Education at Miami University.

Q. And what is your relationship to the plan which we have presented to this Court?

A. I directed the team that put the plan together.

• • •

[R. III. 45-46] Q. Would you consider it an adequate desegregation plan if all of the schools, the elementary schools

in Dayton which were presently identifiably black schools ended up with the 70 percent black or the higher percentage black and all of the formerly white schools ended up with the higher percentage white?

A. I would hate to see that considered as an implemented plan in the City of Dayton.

Q. Would you want to randomize the proportions?

A. Yes. I would say if that happened, that it would meet those parameters, and if those parameters were acceptable to the Court, I guess then that would be considered a desegregated school system. I don't think it is desirable.

Q. Would you consider that desegregation of the system?

A. No. I would much prefer to see the schools not identifiable, and I think if a school has been historically a white school and then just comes into the bare minimum figures, that it probably would still be perceived as a white school or a black school.

• • •

[R. III. 52] THE COURT: • • • That continued to move to the suburbs is not something that results from the desegregation order, is it?

That has been going on in Dayton for the last 20 years?

A. It was established today approximately 11,000 white youngsters and 900 black youngsters have left Dayton in the last five years.

Q. There has been a substantial out white migration in most urban centers; is that correct?

A. Yes.

Q. And that is without regard to desegregation; is that correct?

A. Yes, it has been going on. In some instances with desegregation and in some instances without.

• • •

[R. III. 61] Q. Am I correct that the open enrollment program does not result in substantial desegregation?

A. Well, we are in Court here now, so I would say yes, you are right.

Q. That is a conclusion at page 30 in your report, is it not?

A. Yes.

Q. Do you have figures indicating how many white students chose formerly black schools on open enrollment? Is that not set forth in the document?

A. Yes, it is in the document.

Q. Was it one, two or three?

A. It is a very small number. I think it was one. I am not sure.

• • •

[R. III. 71] Q. If that pattern reflected that all of the formerly black schools were one-third white and all the formerly white schools were two-thirds white, would that be a racial pattern in your opinion?

A. Yes.

• • •

[R. III. 282-285] MR. LUCAS: This is an offer of proof in connection with the testimony of Dr. Gordon. The Court has indicated that plaintiffs could not inquire of Dr. Gordon into the basis for the rejection of the concept of pairing and clustering of schools, and in particular insofar as it pertains to page two of the cover letter to the board transmitting the board's expert's plan.

That cover letter recited that the reason for not using pairing and clustering was because such pairing and clustering tended to cause white flight. Throughout the document marked Exhibit A on behalf of defendants, there are references to white flight and reasons why actual desegregation was not attempted using one of the major criteria under the Swan case.

Reference is frequently made to the articles by James Coleman, one of which is appended as an appendix to the plan, Exhibit A in this record.

If permitted to inquire by the Court, I would offer as Exhibit I to this offer of proof and this record an article appearing in the New York Times July 11, 1975 entitled "Coleman Concedes Views Exceed His Race Data."

In particular, I would have directed the witness's attention to the following paragraphs:

"In answer to questions, he said that his study did not deal with busing, and that his arguments applied to trends in only two or three southern cities.

"Some of the things I said went somewhat beyond the data," he said.

The New York Times article goes on to point out as follows: "However, a thorough check of all 20 cities – in which key officials in each were questioned by telephone – could find no court-ordered busing, rezoning or any other kind of coerced integration in any of the cities during the 1969-1970 period."

Newspaper articles are appended throughout Exhibit A, the proposal submitted to the Court by the board. Therefore, this article would have been offered in response.

I would also offer a document which I will mark Exhibit II, an article entitled "A Response to Professor James S. Coleman's Recent Research and Statements on Educational Desegregation Efforts" by Robert L. Green, Dean of College of Urban Development and Professor of Educational Psychology at Michigan State University, East Lansing, Michigan, and Thomas Pettigrew, Professor of Social Relations at Harvard University, Cambridge, Massachusetts.

I would have also offered an article appearing in, I believe, the American Association of School Research Journal, the exact title I cannot recall, an article titled "Reanalysis of Coleman's 'recent trends in school integration' " by Gregg Jackson of the U. S. Commission on Civil Rights. That would have been Exhibit III.

I would have also offered an article by Dr. Robert L. Green

entitled "On Professor James Coleman and busing – white flight" as Exhibit IV.

As additional support, I would have offered an article from the Dayton Daily News dated Sunday, December 7, 1975 written by Tom Teepen, editor for the Daily News editorial pages. This would be Exhibit V. Similar articles from local papers were offered by the defendants. This article is entitled "SOS Exaggerating 'White Flight' Menace Not Up To Its Billing".

I would have also offered in evidence an article from the Dayton Daily News dated December 8, 1975, page one, entitled "Dislikes busing, desegregation case puts Rubin on spot" byline article by Jonathan Miller indicating that the Court has expressed concern about some of the issues which could have been explored had the Court permitted me to examine the witness in full on this area. It is significant to note that the article indicates that the Judge of this court is concerned that a busing-based school desegregation plan "may so alienate white members of the community that short-term school desegregation may lead to long-term city segregation."

We do not represent that we know these to be the views of the District Court, but that these have been represented to the public at large as the views of the District Court. Of course, the witness's answers to questions might have led to other lines of inquiry which would have further exposed the reasons for their rejection of one of the Swan techniques tending to demonstrate their choice of a less effective alternative reflecting on two factors; number one, good faith and, number two, intent to segregate.

(End of proffer.)

• • •

B. TESTIMONY OF LARRY W. HUGHES.

• • •

[R. III. 111] Q. Dr. Hughes, did you agree with the statement of the report that appears on page 127 that says it has been found that the relative closeness of Dayton Schools makes long-haul transportation an issue in many cities moot here?

A. I generally agree with that statement. I think it makes it a less pressing matter.

• • •

[R. III. 141-142] [Q.] What I am concerned about is whether or not in desegregating elementary or secondary schools, you should end up with a pattern of schools where all the formerly black schools were 70 percent black and all the white schools were 70 percent white.

A. I don't think that would be good.

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C. TESTIMONY OF JOHN B. MAXWELL.

• • •

[R. III. 200] Q. State your full name and your occupation, please.

A. John B. Maxwell, Superintendent of Schools in Dayton, Ohio.

• • •

[R. III. 202-204] Q. All right. Has the Board of Education adopted any plan for submission to this Court?

A. No.

Q. Has the Board of Education taken a vote on submission of a plan to this Court?

• • •

THE WITNESS: The Board voted 7-0 to submit the plan but not approve it.

Q. All right. Was there a vote taken on the adoption of the plan by the Board?

A. No.

Q. It was not a motion to adopt the plan, endorse it?

A. There was an amendment to the motion which was defeated.

Q. And the amendment was of what nature, sir?

A. The amendment was to approve the plan, and this amendment was turned down.

Q. And the vote was what?

A. 4 to 3.

Q. Did you make a recommendation to the Board as the chief school officer for the District as to whether or not it should approve this plan that has been submitted to the Court?

A. No, I didn't.

• • •

THE WITNESS: No, I did not.

Q. Has the Board taken any position with regard to some other plan which it would approve for submission to this Court?

A. No.

• • •

D. TESTIMONY OF GORDON FOSTER.

• • •

[R. III. 205] Q. State your full name and occupation, please.

A. Gordon Foster. I am a professor of educational administration at the University of Miami in Coral Gables, Florida.

Q. Dr. Foster, your qualifications have previously been furnished to the Court and you were qualified as an expert with the Court.

THE COURT: There is no question. Dr. Foster is an expert in this field, and I am pleased to hear from him.

• • •

[R. III. 230-232] THE COURT: Okay. So, if we have a school 33 percent black and 67 percent white, that is not racially identifiable?

THE WITNESS: No. I think what you are referring to is I was speaking about the high schools, if all the white schools come in at 33 percent black and all the black schools come in at 67 percent black or the formerly black schools and white schools, then I would hold they still maintain a racially identifiability rather than if they came in randomized.

THE COURT: Then, racial identifiability is not a function of percentage of students?

THE WITNESS: No.

THE COURT: But you just said that a school formerly —

THE WITNESS: Well, then let me say that it is not the sole function.

THE COURT: And you would draw a distinction between the 67/33 and the 36/64? The three percent would make a difference to you?

THE WITNESS: No, I wouldn't argue too much about that. The thing I would argue more about is, as I say, all the formerly white schools are still predominantly white.

THE COURT: Let's assume we turn it completely around. We will take all the white schools and make them 30 percent white and 70 percent black. What is your view of the racial identifiability there?

THE WITNESS: It would be a lot less than it would be previously, but I think a randomized assignment so that you don't have any relationship to what went on previously, any fixed relationship, is much better in terms of community perception about racially identifiable schools.

THE COURT: You may proceed, Mr. Lucas.

• • •

Q. Dr. Foster, is what you are saying that you cannot consider any school in isolation from the system in which it exists?

A. Yes. Well, that is one thing.

Q. Dr. Foster, are you familiar with efforts by some school boards to set up a pattern whereby the white schools remain whiter and the black schools remain blacker without reference to particular systems?

Is that something that school systems sometimes try to do?

A. Yes, sir.

Q. Does that protect usually the controlling white population or the white power in the School Board?

• • •

THE WITNESS: Quite often it does, yes.

• • •

[R. III. 249-251] THE WITNESS: As I remember in my response to you [the District Court], I said that that fact coupled with the situation that all the formerly white schools were in the 70 percent range and the formerly black schools the other way around — I am sorry — all the formerly white schools were at 30 percent black and the formerly black schools were at 70 percent black coupled with this difference in my opinion tended to make them racially identifiable.

THE COURT: You may proceed.

• • •

Q. As far as that type of thinking goes into racial identifiability, wouldn't it be true even if you filled Dunbar High School fully with white students, people in a few years are going to recall that as being a so-called black school?

A. As a school that used to be a black school.

Q. And the same thing would be true if you filled Belmont with entirely black students?

A. Yes, sir.

Q. But as far as your own definition of racial identifiability

is concerned, that is simply a situation where any school falls drastically outside plus or minus 15 percent from the mean percentage in the school district, isn't that correct?

A. Well, that is part of it. The other part is what we discussed earlier, and that is that you can't consider any one school in exclusion from the rest of the system. The biggest problem is if you have all formerly white schools still predominantly white in a system like Dayton that is about 50-50 and all formerly black schools are prodminantly black. Then, there are quite a few shades of lingering identifiability in my opinion is what I am saying.

Q. This is the third time you have testified in this litigation, is it not, Dr. Foster?

A. I think so.

Q. And do you recall testifying last spring in this case saying, "Well, I think in the final analysis, racial identifiability depends on the individual court's judgment, but my definition in a system that approaches 50 percent black and white would be any school that falls outside drastically plus or minus 15 percent from the mean at any given level."

A. That sounds reasonable that I so testified, yes, sir.

Q. And do you still feel that is a reasonable definition?

A. Yes, sir.

• • •

[R. III. 252] Q. Is it your feeling that in order for a plan of desegregation to be appropriate, there must be an approximate racial balance in every school in the system?

A. No, sir, not necessarily.

• • •

[R. III. 255-256] Q. Under your definition of racial identifiability, would it be fair to say that in the Dayton system if each school had a one-third to two-thirds proportion of either race, you would not consider the school to be racially identifiable?

A. That would depend on other circumstances also such as faculty assignment, the sort of situation that I described in option B of Dr. Gordon's plan. Numerically, you are right. I would consider those schools not to be racially identifiable, but when coupled with the sort of problem that has been described in option two of the high school plan, then I would have some doubt.

Q. If you get beyond simply numerical consideration of proportions so that you have a mixture of black and white students in a school, don't you get into situations that any school in a black neighborhood is going to have a certain type of perception or any school that has a certain name of past history is going to have a certain type perception?

A. It has not been my experience, no, sir, in desegregated systems. I think after a couple of years the public and the school people, the pupils, everybody tends to begin to perceive of schools as just schools and not as black schools or white schools.

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X. RELEVANT PARTS OF THE RECORD OF FOUR VOLUMES TRANSCRIBED DURING THE REMAND HEARING HELD IN DISTRICT COURT IN NOVEMBER OF 1977 (R. IV.).

A. COURT AND COUNSEL COMMENTARY.

[R. IV. 13-17, Vol. 1] THE COURT: Mr. Greer, you did not. The thing that I took exception to was the notion that there was some agreement to which the plaintiffs were not party, and this article seemed to indicate that this might be an issue that you wanted to raise, and I simply wanted to foreclose the raising of that issue, namely a determination in your absence, and I say again there was no arrangement of any sort.

Now, if you have incorrectly interpreted the Court's order the opportunity for the plaintiffs to bring that to my attention has always been present.

MR. GREER: Certainly.

THE COURT: I'm simply not going to address myself to that question. I was raising this for a somewhat different purpose. I thank you, Mr. Greer, because frankly I had forgotten. There are proceedings in this case you gentlemen are more familiar with than I am. It's been a long time since this started. I sometimes feel I was a young man when it began, but it was a limited purpose that I raised this question at this time.

All right. One last observation, gentlemen, I am assuming that the representations made to me by the plaintiffs as to time, that I may rely upon it. I have set aside four days for this case, and I would ask only that it not be a recapitulation of the previous hearing held five years ago. I think the thrust of the inquiry is set forth by the Supreme Court. I am interested in specific instances.

I think, Mr. Lucas, that as I reread the record you and I differed on a distinction that I tried to draw between motive and intent, and I still adhere to my position. I think the

intent – evidence regarding intent is certainly admissible and I will welcome it. Evidence regarding motive, whether it was a motive of good purpose or bad purpose, really is not of significance to me. Let me give you a specific example, which I would say to you that I was somewhat troubled again by newspaper stories that the plaintiffs were prevented from presenting evidence of intent.

If, for example, it was a Board policy to have only black teachers teach black students, the intent of that may well be segregated in results. The argument by the plaintiffs that their motive in doing that was to give black students an inferior education as against the beneficent motive of the defendant who would assert, well, we were doing this because we felt that black teachers would provide an excellent example. I'm really not interested in either position. I am interested or might be interested in the fact of what was done and what segregative effect that it had.

Okay, with those preliminaries out of the way, gentlemen, Mr. Lucas, I will hear from you.

MR. LUCAS: Perhaps it might be helpful, your Honor, if I commented on your Honor's statement. I agree with the Court entirely that there is a difference between evil motive or motive of whatever nature and intentional action, and I think the Supreme Court in all of the cases has talked about the intent required as being an intentional doing of the act and a foreseeable consequences test.

However, I would suggest that the Court consider the question of the evil motive, since it has been specifically addressed by the United States Supreme Court in the Wright vs. City of Emporia, where Mr. Justice Stewart said the existence of an evil motive may aggravate and make more plain the nature of the constitutional violation and make the invidious nature of the discrimination more binding, more lasting, and required greater remedy. I don't have the specific page cite, but I would be happy to supply it to the Court. So I do think it is relevant.

I will be the first to concede, your Honor, that some of the

Court decisions seem to speak of intent in terms of a motive, particularly some of the lower court decisions, and in the same opinion they speak of it in the other sense that your Honor has used.

But I think there is a difference, and our position is that both are relevant, but for different purposes.

THE COURT: All right. You may call your first witness.

• • •

B. TESTIMONY OF DR. WAYNE CARLE.

[R. IV. 17-45, Vol. 1] Q. Would you state your full name and your occupation, please?

A. Wayne M. Carle, Professor of Educational Administration, Texas Southern University, Houston.

Q. How long have you held that position?

A. This is the third year.

Q. Dr. Carle, you testified previously in this case, and at that time you were Superintendent of Schools; is that correct?

A. That's correct.

Q. Since leaving the superintendency, can you tell us what positions you have held, and if you can give us a time frame, I don't think we need exact dates, but it would be helpful.

A. Yes, sir. From 1973 to 1975 I was Superintendent of Schools in Hammond, Indiana. And then assumed my present position at Texas Southern University.

• • •

Q. Dr. Carle, Plaintiffs' Exhibit 11-A is a letter addressed to you from the Department of Health, Education and Welfare.

A. Yes, it is.

THE COURT: Mr. Lucas, I'm not sure of the date. Is that 1969, March 17th?

MR. LUCAS: It's marked in the top right hand in pencil, March 17, 1969.

THE COURT: Yes, but my copy of it is difficult. Is it 1969?

MR. LUCAS: I believe so, yes.

Is that your recollection, Dr. Carle?

THE WITNESS: Yes, it is.

BY MR. LUCAS:

Q. Was this letter addressed to you in your official capacity as Superintendent of Schools?

A. Yes, it was.

Q. All right. Does it indicate that a copy was sent to the State Superintendent?

A. Yes, it does.

Q. Dr. Carle, the letter addresses several issues, and I would like to refer you, if I can, to the faculty issue, faculty and staff issue, that is addressed by the letter.

The determination of the agency was that the district pursues a policy of racially motivated assignment of teachers and other professional staff.

THE COURT: Mr. Lucas, excuse me just a minute. Again, if I interrupt from time to time to refresh my own recollection, I hope you will bear with me.

I have a recollection that Dr. Carle required a hiring of black teachers to the approximate percentage that black students bore at that time of the total, and insisted then that each school have a similar ratio. Is my memory correct?

MR. LUCAS: I think there was an agreement reached with HEW following this letter, your Honor, which resulted in a hiring policy being adopted.

THE COURT: All right.

MR. LUCAS: I will try to touch that briefly.

THE COURT: No problem, I'm just trying to recollect what I recall hearing. Go ahead.

BY MR. LUCAS:

Q. Prior to the receipt of this determination by HEW, had officials of HEW conducted an investigation into the faculty assignment policies of the district?

MR. GREER: I would object, your Honor. It seems to me that we are simply tracking over the same ground that we tracked five years ago.

THE COURT: I'm going to sustain the objection solely because I think that is within my understanding, Mr. Lucas.

MR. LUCAS: Your Honor, I think that we should address ourselves to this question in light of the Supreme Court's opinion about confusion on the part of everyone, at least as that quote sought, as to various legal principles and as to the various issues which need to be addressed. And I think that the Court's opinions, citations to various decisions dealing with the question of intent require us to speak to those issues of intent that are relevant in the record or to be supplemented directly to the record. I think it's a fair reading of the transcript with exhibit that at least there was some continuous misunderstanding, perhaps only counsel's fault, but as to what kind of intent was or was not relevant throughout the hearings.

THE COURT: Well, Mr. Lucas, I'm not objecting to your — I'm not sustaining Mr. Greer's objection as to the area that you wish to cover. I am sustaining on the basis of I see no point in repeating the testimony that is already before the Court.

I would assure you, Mr. Lucas, that a review of the transcript has been made of the hearing in 1972. I am sustaining the objection solely in the hope of saving time, and yet I find that our discussion is going to take up the time anyway.

Would you proceed, please?

MR. LUCAS: My purpose is simply to lay a predicate for asking a question.

THE COURT: All right. You may proceed.

Q. Dr. Carle, did you as superintendent direct your staff to furnish information to HEW as part of their inquiry into the faculty assignment policies?

A. Yes, I did.

Q. And did that also include professional staff?

A. Yes.

Q. Let me go backwards just a moment.

When did you assume your position with the Dayton Board of Education?

A. In 1968.

Q. In 1968 through the Dayton lawsuit did you have more than one occasion to conduct your own review of a variety of policies and practices of the district?

A. Yes.

Q. From an examination of the policies and practices that you found, as were operated during your superintendency, is the conclusion reached by the HEW as to the racially motivated assignment of teachers and professional staff a conclusion you can join in or disagree with?

• • •

A. Yes, I think the wording is accurately portrayed.

Q. I realize the wording is accurately portrayed, but does that portray an accurate reading of the facts as you understand them?

A. Yes. The wording I think that we are referring to is the racially motivated assignment of staff, I think that characterizes the situation as I found it.

Q. Is it your understanding, Dr. Carle, that the school system has the right to assign and reassign teachers on an annual basis?

A. Yes, it does.

Q. In making such assignments, were the assignments in the Dayton School District before you came and while you were there until the time of the agreement with HEW, were those assignments done on a racially motivated basis in whole or in part?

• • •

A. I understand your question to be, was the assignment of staff on a racially motivated basis totally discontinued, or words to that effect, and I am saying no, assignment was still racially identifiable and motivated on the basis of race.

THE COURT: Excuse me. In point of time, Dr. Carle, subsequent to the HEW letter or subsequent to what point?

THE WITNESS: I understood the question to be between the time of this letter and the time of the original suit.

THE COURT: Okay. And may I interpret your answer that that then terminated at a point or did it not terminate?

THE WITNESS: No, my answer intended to say that racially motivated assignment of staff continued to some extent throughout that period.

Q. You came onto to the superintendency in '68.

Was there racially motivated assignment of faculty and staff at that time?

A. Yes.

Q. And what was the date of the agreement with HEW; do you recall?

A. I don't recall the date, but it was within I think a year after the date of this letter.

Q. And did the racially motivated assignment of teachers continue during that period?

A. Yes.

Q. Dr. Carle, does the racial assignment of faculty and staff, racially motivated assignment of faculty and staff, have an effect on the schools themselves beyond the faculty?

MR. GREER: Objection.

THE COURT: Well, Mr. Lucas, I am mildly concerned over this line of testimony in view of my order of 1973 that I thought dealt with this. And I call your attention to the Subsection 3, "Maintain faculty assignment policies that will reflect in each school the approximate ratio of black to white faculty throughout the district. And then establish hiring policies that will enable the clerical and maintenance personnel hired by the School Board of Dayton to approximate the proportion of black to white ratio of the Dayton School District."

Now, this I think bears upon a critical question that troubles me, and let me share my concern with you. Do you view this as a condition precedent to punishment; that is, if the School Board conducted these activities, and for the moment I will concede – I will accept Dr. Carle's view that it was done and it was racially motivated, but if this Court's order directed

that that be terminated, that that specific area end, and again it was my impression that it was ended, even at the time of the hearing in 1972, is it your position that the Board having done that must be punished? Because clearly if the situation has not been corrected that's one thing. But if it has now been corrected, what the School Board did nine years ago would affect at the most now perhaps a third of the students in the system.

MR. LUCAS: Your Honor, three responses, if I may.

No. 1, we do not view desegregation as a punishment for anything. We view it as a benefit.

No. 2, it is my understanding of the defendants' position that there is no constitutional violation to be cured, that there was no constitutional violation to be cured, and that, therefore, any part of your Honor's orders should be dissolved, including, I would take it this part, and the case dismissed, that was their argument to the Court last time we were before the Court. With that context I don't think I can assume anything as implicit.

My third answer is that the defendants – the question I'm addressing right now with the withness has to do with whether or not the policy of faculty, racially motivated faculty assignment has effects other than the staff in the building itself. Whether or not it impacts on the identification of schools, impacts on parents, students, and so forth, and for what periods.

THE COURT: I recall again, Mr. Lucas, some testimony, some extensive testimony, on perception, community perception, that certain schools were perceived as black and certain were perceived as white, whether in fact they were or were not.

But I'm concerned with a little bit different view of this. I am concerned at this point with what his been done that requires correction by this Court. Because as I read the Supreme Court remand, that's what they are saying, I think.

And I agree with you, and I agree with – if there are aspects of this that are susceptible of correction, they must be corrected. But the fact that the community may perceive a

school as black, I don't know what I can do to change the community perception, if it being black in and of itself is not a constitutional violation. And I hope – I am trying to draw a distinction there that may be difficult to follow.

MR. LUCAS: I think I understand your Honor. And I think the point is, whether or not the identification, which may be an easier word than perception, arises out of a constitutional violation. If it does, this Court not only may, it must deal with the effects of the constitutional violation.

THE COURT: Surely you don't mean that I must order the community to stop identifying this school as a black school?

MR. LUCAS: No, sir.

THE COURT: Of course not.

MR. LUCAS: I am not suggesting the Court has mind control.

THE COURT: Hopefully not.

MR. LUCAS: I know Federal Judges have been accused of almost everything, but I don't believe I have heard of that.

THE COURT: Let's keep it that.

The question is how the school is viewed, or whether this, the actions of the Board, would have contributed to that view or identification is not the central question. It's just not the –

MR. LUCAS: In Swan the Supreme Court talked about the various things that school boards do to schools that tend to identify them as black or white schools. And one of the things they said was the assignment of faculty in a uniracial pattern or racially disproportionate pattern, that that tended to identify, and I will keep with the word identify since I think we are all more comfortable, identify that school in the community as a black school or white school.

I would refer the Court to another line of cases which deals with the question of how long after initial decree should the Court continue to have reports, or how long should the Board be under a decree.

And a number of cases, most of them frankly arising out of the Fifth Circuit, which had a great deal to do with that, have talked about the fact that you don't correct 100 years of

discrimination in two years of a plan or five years of a plan, that these things have to be looked at over a longer period of time.

THE COURT: Mr. Lucas, I'm not real sure that Swan travels very well, and I am of the view that this is implicit in the most recent Supreme Court decision.

You and I once had a discussion where you asked me the question do I assert that there are two different laws, one for the South and one for the North. And I don't assert that. But I suggest to you that the recommendation of the Sixth Circuit that this case be reexamined in light of Swan was specifically set aside by the Supreme Court, and I think for good reason. But be that as it may, I am still back to this basic question of we don't put the mark of Cain on a school board forever. We are here to determine whether or not there are incremental segregative actions that I can correct. And that, of course, is what you and I were just discussing, because there is a limit to what is doable even by a Federal Judge.

Well, we have gotten off the point, and I beg your pardon. Would you read the last question, please?

(The record was read by the reporter as follows:

"Question: Dr. Carle, does the racial assignment of faculty and staff, racially motivated assignment of faculty and staff, have an effect on the schools themselves beyond the faculty?")

THE COURT: You may respond.

A. Yes, it was one of the major factors that marks this school as being racially then viable.

Q. Does the pattern of racially motivated faculty and staff assignments impact on only a single school, or does it have effects on all the schools in the system?

• • •

A. No, there's a reciprocal effect of receiving or identifying any school within a school system as being racially separate. That then identifies the option schools as also being separate.

Q. Dr. Carle, let's assume that since – let's just pick a date – since 1940 there has been a pattern of deliberate, purposeful

racially motivated assignment of teachers and professional staff in a school system and that has continued until 1971. I want to ask you two questions based on that. Assuming, first of all, that you reassigned only the faculty in the direction of disestablishing this pattern, does that reassignment of faculty only eliminate the effects of the previous racially motivated faculty assignments?

• • •

A. No. I said that faculty assignment was a major factor, but it is only one factor. Any school that is identified as racially separate cannot be perceived as being desegregated if the student body is also segregated.

Q. All right. My second question based on the same set of facts is whether or not the reassignment of faculty and pupils can eliminate the effects of the dual structure of faculty assignment that existed from 1940 to, say, 1974 or '5?

• • •

A. In my judgment on the observation of the desegregation around the country, those two factors alone would not be sufficient. There would have to be a very major and continuing commitment on the part of the Board of Education to show to the community that the previous pattern was indeed disestablished and was intended to remain that way.

We have, for example, patterns of resegregation that have occurred where limited actions have been taken without fully disestablishing the previous pattern.

THE COURT: Mr. Lucas, hasn't the Supreme Court spoken on this? Haven't they indicated that resegregation is simply not a matter for the District Judge inquiring into?

MR. LUCAS: They said if it's not a product — in Pasadena, if it's not a product of the original violation, if it's something that occurs in the question of the original violation, and there are a variety of cases that speak to the incomplete status of whether or not the effects have been eradicated over a period of time, most of them arising out of the cases that raise the

question of how long should the Court continue supervision or when is the district entitled to be let out.

I might give you an analogy which some folks have used of voting rights acts where for a stated period of time the district is under the order until the effects of the previous discrimination has had time to dissipate. There it is not assumed that because one says tomorrow you are desegregated that going home will eliminate the hundred years of force that has headed one direction that has suddenly turned around.

THE COURT: The analogy, Mr. Lucas, I think runs head-on into Pasadena which can be read as substantially continuing the rights of the Federal Court to impose a trusteeship upon the school system.

MR. LUCAS: Well, no one is suggesting a trusteeship.

THE COURT: Well, in a sense you are. This does trouble me. It has ever since I read that case as to just what is the end product. As near as I can figure out the obligation of the District Court is to correct the situation, and that's it.

MR. LUCAS: Well, let me speak to what I hear as several questions, your Honor, asked several expressions. It seems to me that we have to keep separate at this hearing the question of whether or not the Court, having entered its order and the schools having changed their racial characteristics, that the Court need do more. That seems to me to be a Pasadena inquiry and a substantially different inquiry as to whether or not in the first instance there was a constitutional violation of a sufficient dimension to justify any particular court order, whatever scope that might end up being, and to evaluate whether or not there was a violation and whether or not its effects are still present in the district, we have to look at it as though the plan had not yet been implemented.

What I suggest is there is some feedback across the line in terms of what more the Court should do as opposed to what the Court should do in the first instance.

THE COURT: Well, I would suggest that what more the Court should do has got to be simply a tactical position, Mr.

Lucas, and is only confusing. There is no conceivable inquiry so far as I'm concerned, unless someone can demonstrate it to me, that there is before the Court any expansion of this Court's previous order regarding transportation of students or desegregation.

MR. LUCAS: Your Honor misunderstood me. I wasn't suggesting that there was an expansion of the order, but whether or not the order should remain in effect. This is the sentence I was using, whether the Court should do more.

THE COURT: I interpreted your statement then incorrectly, Mr. Lucas, and I hope I did misunderstand you.

MR. LUCAS: There is still an issue we will address with the Court's permission of whether or not one aspect of the order has been complied with, and I think that speaks to several issues, and I will take that up at the appropriate time.

THE COURT: All right.

MR. LUCAS: But my use of words simply dealt with whether or not the order should remain in place given a violation.

THE COURT: All right.

A. Mr. Lucas, I didn't mean to imply in my previous answer that time was the only other factor besides staff and pupil desegregation. I think the Board — or at least there is a statement that the Board intended to expand or to increase desegregation sometime in the past by expanding boundaries over three predominantly black schools, and that was eminently unsuccessful as my predecessor testified, precisely because of its limited nature. So there is also the matter of what schools are involved and how extensive the disestablishment is.

Q. Dr. Carle, as I understand it, your testimony is that the time that the change was in place and had some relation to how long the discrimination went on before, that it has to do with the nature of the remedy itself and the extensiveness of that remedy; is that a fair summary?

A. That's correct.

MR. GREER: I'll object to the summarization.

THE COURT: Overruled.

Q. All right. In 1969, in Plaintiffs' Exhibit 11-A, HEW indicated that there was a substantial dualability in terms of race, of color with respect to the distribution of pupils. Did it indicate both in this letter and in other correspondence that its investigation of that was continuing?

A. Yes, it did.

Q. All right. In the last paragraph of the first page there is a statement with respect to Roosevelt High School.

THE COURT: Isn't Roosevelt closed, Mr. Lucas? Am I confused, Mr. Greer?

MR. GREER: No, it is closed.

MR. LUCAS: Not at this time, your Honor.

THE COURT: I know, but, Mr. Lucas, problems of Roosevelt High School may be valuable for historical purposes, but in terms of what remedy, if any, is to be applied, I hardly think that it has any significance; does it?

MR. LUCAS: Your Honor, I think it has a great deal of significance because it has to do with the question of violation, which is directly related to remedy, and this is not, as I understand it, simply a remedy hearing.

THE COURT: It is essentially, Mr. Lucas. There is a predicate for remedy, you're correct, and that you are entitled to present, but somehow I looked upon this proceeding — I interpret the mandate as to take action prospectively if action is required, and I would suggest to you that Roosevelt High School in 1969 cannot under any circumstances have students in it in 1977 that are still there.

MR. LUCAS: Your Honor, I think the Supreme Court sent this case back to the lower courts for more specific findings on both the existing record and supplemental record that might be made.

THE COURT: Now, Mr. Lucas, excuse me. Not for more specific findings but a determination of whether or not there were other acts that had an incremental, I believe, segregated effect, and this is more than an abstraction, Mr. Lucas, and this is why I say that what occurred in Roose-

velt High School that is now closed strikes me as being somewhat less than significant. But again I will let you proceed.

MR. LUCAS: Well, I think perhaps it would be helpful if the Court understood what our position is. On page 12 of the opinion the Supreme Court says: "It is evident from the opinions both of the Court of Appeals and the District Court as to the applicable principles and appropriate relief," then referring to some confusion in various stages of the case, "the case must be remanded to the District Court for the making of more specific findings and, if necessary, the taking of additional evidence."

As we understood that – and I won't try to reread all of the sections of the opinion – that means specific findings about the record. The Court expressed – I won't question the Supreme Court's view of that. The Court in a number of places pointed out that it had not been given sufficiently specific findings on a variety of issues.

THE COURT: Would you address yourself to the bottom of page 13, and "It must determine how much incremental segregative effect these violations had." Now, whatever was wrong with Roosevelt High School, it has now been closed and the students that were there at the time of this letter I say again could not under any conceivable way still be there. The high school is a four-year high school, I believe.

Now, what I'm seeking to determine is let's assume that Roosevelt High School itself was a segregated high school. Assume that. The incremental effect of a non-existent school in 1977, I suggest to you, is of historical interest only.

MR. LUCAS: I would respectfully disagree because what happened to that high school, what effect there was from placing it there, what effect there was from the assignment policies, where the boundaries were drawn, what options there may have been speaks to what happens to students and why the demographic pattern is today what it is as opposed to what else it might have been. It also speaks very importantly to the question of intent.

THE COURT: You may proceed, Mr. Lucas.

MR. LUCAS: And that again affects all the issues, not just schools that are closed.

THE COURT: Let me ask you a question, if I may. Would you know, is there any member of the School Board today that was on the School Board in 1969?

MR. LUCAS: Yes.

THE COURT: How many?

MR. LUCAS: I know of one, and the others I would be guessing at. Leo Lucas is one.

THE COURT: It would be your opinion that the intent then is transferrable and along with the minutes of the Board and the prior actions attaches to the present Board?

MR. LUCAS: Yes, sir. I don't think a Board starts off every year with a brand new set of schools built in new locations. I think it inherits the past.

THE COURT: That may be very well, but they start out with a brand new set of members with their views and their ideas and the idea that they are charged with the prejudices perhaps or the biases or the errors of a previous school board –

MR. LUCAS: Well, it's not a personal indictment, your Honor. It's no more than saying a new judge of the court has some responsibility for the decision or the case load of the past.

THE COURT: Oh, indeed, but he is not chargeable with the motives or intent of his predecessors. He may be –

MR. LUCAS: But the motives and intents of his predecessor may have had something to do with the case load he inherits or the school buildings and the school assignments practices, and if we are measuring the effectiveness of the new Board members' disestablishment of the past segregation, that's another test.

THE COURT: Mr. Lucas, as long as we regard this prospectively and not retrospectively, I think we can come to an understanding because as I view that this is what the Supreme Court is saying. They are urging this Court to

make corrections if corrections are needed. I don't think they are asking this Court to become a philosopher as to the evils of what went on in the past. I may be incorrect in my view. You may proceed.

MR. LUCAS: We are not suggesting a philisophical approach, your Honor.

THE COURT: I'm delighted to hear that.

BY MR. LUCAS:

Q. Referring to Roosevelt High School, Doctor, did HEW advise the system of its determination with respect to that school?

• • •

A. Following this letter?

Q. No, in this letter.

A. Yes, they did.

Q. What was that determination?

A. That the students of Roosevelt High School are not afforded the same educational opportunities as other students in the system.

• • •

[R. IV. 91-92 Vol. 1] A. No. The communication indicates that these recommendations were ignored and that, in fact, the reorganization with respect to middle schools did include racially segregated and in schools that could become—that is, both currently and schools that could become more racially segregated.

• • •

Q. Dr. Carle, I'm going to direct your attention to plaintiffs' Exhibit 106. Plaintiffs' Exhibit 106 lists Dayton Public Schools' racial composition when new schools open. It lists the high schools and elementary, date opened, date of additions, pupil ratio, percent whites, faculty ratio, percent white. Would you agree, Dr. Carle, that a school board opens a school deliberately and purposely?

A. Yes, it does.

Q. And when school boards build additions they do so with intentions and purpose; do they not?

A. Yes, they do.

Q. And when they assign faculty to schools, they do so intentionally and purposefully; do they not?

A. Yes.

Q. The faculty assignments that you see here, did they indicate the percentage white or black?

A. Yes, they do.

Q. And does the data on this chart also indicate pupil percentages?

A. Yes, they do.

THE COURT: Mr. Lucas, let me ask you a question. Do you have a comparable document that would show the number of tenured teachers in the school system on that date broken down by dates?

MR. LUCAS: I don't know if such a document exists, your Honor.

• • •

[R. IV. 100-102, Vol. 1]

Q. From an examination of Plaintiffs' Exhibit 106, do you have a view as to whether or not this type of assignment pattern that's exhibited here of pupils and faculty would be the result of accident or inadvertence?

• • •

A. Mr. Lucas, for some five or six years I was an assistant superintendent for personnel, so I became very familiar with employment and assignment practices under the Ohio law. And it is – there is among the profession misunderstanding about the difference between assignment and placement of – or employment and placement of teachers.

This table deals only with the placement or assignment to a school. The contract with the Board of Education employs a teacher for a school district, not for a particular school. Therefore, a teacher has no right under the law to assignment to a particular school building and may be moved. And I would give this caveat, that in recent years there have been certain employee master contracts that would affect that, but that was not true of most of the years reflected on this chart.

THE COURT: I don't think your answer is responsive, Dr. Carle. Would you read the question again, please?

A. So the question is do these reflect racial assignment at the time the schools opened or additions were made, and almost entirely they do reflect that.

• • •

Q. Dr. Carle, from an examination of Plaintiffs' Exhibit 106, particularly the pupil assignments and faculty assignments at the time of opening, do you have a view as to whether or not that pattern, if any, could have resulted from inadvertence, accident or chance?

A. I see no way it could be chance. It would have to be by intent.

Q. Dr. Carle, you made a statement that you were assistant superintendent of personnel.

Can you identify where?

A. In Akron, Ohio.

Q. And you held a position with the State Board of Education; did you not?

A. Yes, as assistant state superintendent of public instruction.

Q. And in that position you worked with school districts all over the state?

A. Yes.

• • •

[R. IV. 130-131, Vol. 1] Q. Dr. Carle, why did you not go ahead and implement the plan which was prepared by you, prepared for the Board by Dr. Foster after the adoption of the resolution? Did you feel that you had the authority to do that as superintendent?

A. The specific authority given to me, of course, was rescinded. The superintendent under Ohio law does have responsibility for assignment of pupils and faculty. So to a limited extent perhaps a superintendent could proceed, but the fact of the matter is the kind of plan that was envisioned here involved all aspects of the schools; that is, the development of proper curriculum, the preparation of faculty as well as the reassignment of students, and under Ohio law a school board has control of the policies and the budget. It would have been, if not impossible, faulty on my part to proceed without the support that was needed to make a desegregation plan effective.

Q. Dr. Carle, is there any – let me back up and have a preliminary question. Was the plan prepared by Dr. Foster and adopted by you educationally sound and feasible?

A. It was both educationally sound and feasible, yes.

Q. Is there any reason, Dr. Carle, except for the action by the Board reestablishing boundaries and cancelling the actions taken by the previous Board, why that plan was not implemented as the plan itself called for the following September?

A. No. If the Board had not acted in rescinding it the students would have been reassigned under the plan effective September of 1972.

• • •

[R. IV. 139-142, Vol. 1] Q. Now, as a matter of fact, did you not respond to this letter of January 22, 1970 by the letter that is marked as Plaintiffs' Exhibit D or was marked as such some five years ago?

A. Yes.

Q. And in that letter you pointed out that the transfers of 34 black students and 36 white students were done for the individual good of those students and to avoid interruption in their continuity of instruction; is that right?

A. Yes, sir.

Q. And in fact you pointed out in that letter to HEW that these transfers that were based on those kinds of individual considerations did not render Roth 100 percent black; isn't that right?

A. That could very well be, but I can't –

Q. In fact, a total of 18 white students remained at Roth; isn't that right?

A. I assume that that is there, but I – could you direct me to the paragraph?

Q. The paragraph will be the third indented paragraph on the first page of your letter of February 20?

A. Okay.

Q. And that information that you provided to HEW to tell them that they were wrong when they sent you the previous letter with accurate information; wasn't it?

A. This letter we are referring to? As far as I know that is correct, Mr. Greer.

Q. Let me call your attention – I realize a long time has passed – to the last paragraph of your letter of February 20, 1970, first the second to the last paragraph. You indicated to HEW that these were special transfers, emergency situations because of explicit educational reasons, and that you would – the intent was to reassign all of these students to their school attendance areas beginning the September of '70 semester in the absence of explicit educational reasons to the contrary.

A. Yes.

Q. And in investigating that old situation as you indicated in this letter, you found that there were sound educational reasons for these central transfers; didn't you?

A. Yes, sir.

Q. In fact, in the last paragraph of this letter you state – and I'll quote this because I want to ask a question about it.

"I appreciate your concern about forces in actions that contribute to increased racial isolation. I regret, however, that neither your office nor other federal agencies, including the Department of Justice, that were invited to observe last fall found it expedient to express concern at that time or to lend direct assistance to reduce a racial polarity and separatist pressures." I take it you felt somewhat strongly when you responded to HEW's contentions that were made in Plaintiffs' Exhibit 11-C?

A. Yes, sir, I did.

Q. And in fact you were endeavoring as strongly as you could to reduce racial isolation wherever possible; weren't you?

A. No. We were responding to situations caused by racial isolation that were virtually impossible to deal with and very frustrating, and it seems that almost everyone has an opinion or a complaint about that, as a matter of fact resolving is very, very difficult and results in very strong pressures.

Q. Can you recall testifying on this exact identical subject five years ago?

A. I recall that this topic was raised, yes. I think by you perhaps.

Q. And in fact as you testified then, these special transfer situations were justified and that the safety of students and their continuity of their education had to be placed on a high list of considerations; isn't that right?

A. It's precisely that kind of frustration, Mr. Greer, that led me to conclude that piecemeal and token efforts dealing with crisis situations were not satisfactory to resolve a matter of longstanding racial isolation in segregation, that this

simply leaves us in a frustrating and impossible situation to operate schools.

Q. And it's that frustration you expressed in the last sentence of your letter, Plaintiffs' Exhibit 11-D; isn't it?

A. Yes.

• • •

[R. IV 144-145, Vol. 1] Q. Isn't that true?

A. I think so, yes.

Q. And you have touched today upon the subject of optional attendance zones, and you testified on that subject five years ago; didn't you?

A. I think perhaps tangentially, I don't recall extensively, but that could be so. I do recall there was some reference to maps at that time, yes.

Q. Can you state for the Court any optional attendance zone in the City — in the whole school district of Dayton that in April of 1972 when this suit was filed gave an option to students in that zone that increased racial isolation in one of the two schools affected by that zone? Any example.

A. I think the review of optional zones indicated that a number of optional zones still existed where there was — where the change had taken place sometime before.

However, there was indication that particularly in the Dayton view area, there was recent evidence of assignment — that is of enrollments between schools such as Roosevelt and Colonel White, Colonel White and Kiser that were racially identifiable, Mr. Greer.

Q. So that the examples you would cite would be the Colonel White-Kiser and Colonel White-Roosevelt?

A. Your question was existing in 1972?

Q. When this suit was filed.

A. I'm saying that I recall those examples, I don't know that those would be the only ones operative at that time, but there still were optional areas that existed, and I could not testify as to the moment as to whether they then involved any elections, because I think that some of them had existed for some number of years.

Q. My specific question was as to examples of optional zones that in April of 1972 gave the students living in those optional areas a chance to attend one of two schools in a manner that increased racial isolation. And you have given me two examples. Is it your testimony that, for example, the Roosevelt-Colonel White optional zone as it existed when this lawsuit was filed increased racial isolation or diminished racial isolation of the schools affected, or do you know?

A. Given only that school year, if that's the intent of your question, I would not want to venture an opinion at this point.

• • •

[R. IV. 149 Vol. 1] Q. And as I understand it, if there are racially identifiable schools in a school system, the only way that you can resolve that problem, regardless of how we characterize the problem, is by taking the system as a whole; isn't that true?

A. Yes.

Q. In other words, if you try to — if you have a situation where one school is predominantly composed of black students and is identified thereby as a black school, the only way that you can really eradicte that is on a system-wide approach?

A. No, I indicated to Judge Rubin that the mere existence of a predomonantly (sic) black school does not necessarily indicate a segregated system. • • •

• • •

[R. IV 151-176, Vol. 1] Q. All right. Let's explore your system-wide view with respect to something that you testified about this morning.

When you talked about the need of looking to the entire school district in areas of racial isolation or of segregation,

you cited an example where, and I think I am quoting you correctly, at an early date the school board in Dayton attempted to increase integration in part of the system.

Do you recall that?

A. Yes.

Q. And what you were referring to was the 1952 so-called west side reorganization; isn't that right?

A. Yes, sir.

Q. And the intent of that board action was to achieve greater integration in the student body; was it not?

A. There was a statement by the former superintendent to that effect, yes.

Q. And the idea was that by expanding and making this reorganization more students in the Dayton system would have an opportunity to be in racially mixed situations; isn't that correct?

A. I don't know that was inherent in the statement at the time, but I would not argue that that could be what was in mind.

Q. And in fact as you have testified before, as far back as 1967 you had pointed out this action of the Board as being a positive effort of the Board toward integration, isn't that true?

A. That was not referred to today, but I think previously there was a statement in 1968 that referred to it, yes.

Q. All right. I might refer the Court to Joint Exhibit 1, which was the 1967 expression of your opinion in that regard.

A. Mr. Greer, could I just correct that? I was not in Dayton in 1967. You may be referring to a resolution that was adopted by the Board of Education in 1967 prior to my arrival there.

Q. I'm sorry. But, at any rate, you have expressed that opinion before today, both in the prior trial and in prior statements as superintendent of the schools with regard to that 1952; haven't you?

A. That limited action in a segregated system is often doomed to failure?

Q. Or in a racially isolated system or segregation or whatever words you want to use.

The specific thing I am referring to is your statement that the intent of the Board as expressed in that action was a positive effort toward integration, whether it subsequently was frustrated or not.

A. Yes. But the signal that is sent is here is another group of black schools about to be identified. Had the opposite action been taken, namely white students being transferred into the black schools, I suspect an entirely different signal might have been sent at that time, and that might have been an alternative that would have led to something different than what we have inherited.

Q. At any rate, as we know, the Board's intentions in that reorganization in 1952 were frustrated and more and more schools became black; isn't that correct?

A. That's the result of that action, yes.

Q. And it's your —

THE COURT: Excuse me, before you leave that, Mr. Greer asked you if the Board was frustrated. Now, you agreed with that?

THE WITNESS: I agreed with the result he indicated. I don't know that the Board was frustrated one way or another. I do recall that a deposition was taken from Mr. French indicating that the outcome of that effort was that the schools -- the next area of schools became all black. I don't remember his characterizing it as a frustration or any other — anything other than it didn't work.

THE COURT: I understand. The problem that you and I have, Dr. Carle, is you think frequently I am asking a question that I am not.

What I am concerned with is do you consider that the action of the Board was done with the intent of it failing, or did it fail despite their good intentions?

THE WITNESS: I think it's absolutely impossible to characterize which direction the intent was.

I think that the action was an intended action, and whether or not the Board intended for a permanently less segregated system to evolve, the fact is that it didn't. So that obviously is not a workable solution.

I'm not sure that they ever went back and said, okay, can we put white students back in the schools and will that work better. I don't think there was any kind of — I'm not aware that they consciously then tried to do anything else.

Therefore, I can't characterize the original intent other than that as Mr. French said they moved the boundaries, which did include some black students in formerly predominantly white schools.

THE COURT: You are aware, of course, that my inquiry was to be as to segregated intent.

Now, an experiment that fails may be evidence of segregated intent if it was foreseeable that it would fail or conversely it may be evidence of integrative intent and that the, if I can use the term, technology of the times simply didn't understand the totality of what occurred.

Is it your opinion that it was foreseeable at that time that this would fail?

THE WITNESS: I am sure that it was foreseeable that the schools that were then all black would remain all black. I cannot read the Board's mind as to whether or not it foresaw what the change of boundaries toward the all white schools — or the predominantly white schools would result in those schools.

But I doubt that there was any doubt in their minds that the schools that were involved in this change would remain at least half all black.

THE COURT: You may proceed, Mr. Greer.

BY MR. GREER:

Q. Let's move from that example back to the theory that you have been discussing with us today on the necessity of looking to the entire system.

I take it one reason you used this example was that while the expressed intent and the immediate effect of the Board's action in '52 was to increase integration in part of the school, the schools later became black, and in order to do something effective to avoid that you have to do the entire system; isn't that right?

A. With respect to that period of time, again you can't operate part of the system on a segregated basis without signalling that the rest of the system is on a segregated basis. And I don't think — I think that signal was clear at that time as it has been since.

Q. And what happened in that instance was that, in your opinion, because they didn't cover the entire system and make a situation in every school where you had a rough approximation of the black-white balance of students throughout this system, the immediate effect of reducing racial isolation was frustrated by population movements away from those schools; isn't that right?

A. That's not correct in my judgment, in that you assume there is nothing in between involving every school and taking some action that's appropriate to the situation.

The action that was taken there was that nothing was done to eliminate the segregation that already existed in the three schools whose boundaries were changed. Therefore, nothing was, in terms of the Board's overall policy, was communicated to the community.

Let's suppose, for example, that the Board said we have found something very much of a problem in our system, particularly let's say they said it in 1955 after Brown. We note that we do have racially segregated schools. Therefore, it is henceforth our policy that there shall be no more segregation, and we are hereby changing the presently segregated schools to whatever would be necessary to desegregate them, and that we intend to operate no segregated schools in the future.

If that were communicated to the community, I suspect it might have a much different effect than minor boundary changes involving schools that remain all black.

Q. Well, let's look at the boundaries and the evidence in this case has demonstrated, of course, that for a period of 20 years before this suit was filed there were no appreciable changes in the boundaries of the various schools in the Dayton School District; isn't that right?

A. That's my understanding, yes.

Q. And, therefore, if one of those school attendance areas was white or mixed at one time and later became black, it became black because of population movement; did it not?

A. I think from what we know about population movement today that is not a proper characterization. I think there's ample experience in Dayton to know that the location of schools, the policy of the School Board and the assignments of staff, the racially segregated history of the district all reinforced whatever may have happened in housing. So I would not identify housing as the single factor that may have changed the boundaries — or changed the characteristics of a given school.

THE COURT: Excuse me just a moment. Dr. Carle, are you suggesting some form of affirmative action was required by the Board?

THE WITNESS: I suggested that there were alternatives to having racially identifiable schools.

THE COURT: Okay. But I'm impressed with this statistic or this statement that I do have a recollection of, but, frankly, not a very vivid one. If the Board does nothing, if they establish boundaries and for 20 years they were not materially changed, and if in that period of time certain schools became black, then as near as I can tell the Board's doing nothing must be evidence of segregative intent or you must take the position that they were under a duty to do something affirmatively. Now, am I correct in my analysis of your testimony?

THE WITNESS: I think that —

MR. LUCAS: Your Honor, I would like to object because I don't think that that reflects —

THE COURT: Frankly, Mr. Lucas, I don't think this is open to objection. The purpose of this hearing, I believe, is to educate me, and I will confess my need of it. And if I wish to interrogate your witness as to questions that trouble me I'm not going to entertain an objection. You may note it for the record.

Could you answer that, Dr. Carle?

THE WITNESS: Yes. The reason I am pausing has to do with affirmative action. I'm not sure that's the only course open is what I'm saying.

THE COURT: The concept of affirmative action.

THE WITNESS: What I would like to emphasize is that — and I'm sure that we are all aware that societal pressures like a train running on a track tend to be undiverted unless something intercedes. I think for many years it was evident what the public policies were, whether they be characterized as walking schools or whatever, were leading to in American education and in the cities. Particularly after Brown it became painfully aware of what was happening.

Now, if there was merit to Brown, and I certainly think there was great merit to Brown, then it certainly was evident after 1954 or 1955 to school boards what the impact of continuing the present policies, whatever they were, was. In that context, yes, I think thinking persons, decent persons, law-abiding persons have an obligation to review their policies no matter how benign they may appear simply because those policies somehow have led to the situation.

THE COURT: So it would be your opinion that a Board that does nothing, allows boundary lines to remain by doing nothing commits a segregative act?

THE WITNESS: Yes, I would have to say that certainly in a judgmental basis in the fact that the Board has before it so many options, and it clearly knows that it has the authority to do something different, and if it doesn't do it I think its intent must be to maintain what, therefore, this

is, and a policy which is in place is just as active a policy as one that is newly adopted.

THE COURT: You may continue.

BY MR. GREER:

Q. Let me follow up on this same line, Dr. Carle, with what I think follows from it. As I understand your views in this area on responsibilities of affirmative action, wouldn't it be correct to say at least from your viewpoint on the subject of racial isolation that every decision that a school board makes where there is racial isolation for any reason somewhere in the community — every decision a school board makes, except a decision to have some degree of racial balance in all the schools in the system, becomes by definition a racially segregative decision?

A. No, I don't think that's the thrust of my views to this point, but the effect of — the cumulative effect of policies can indeed lead to that and did lead to that in Dayton, and unless that's interceded in some manner that corrects the segregation then indeed almost everything that is done does have effect on it. It does have cumulative effect.

Q. Let's just take a hypothetical situation of a community that has no school system at all but all the blacks live on this side of the river and all the whites live somewhere else and a school system appears on the horizon. Am I not correct that unless there is some racial balance merely to impose a grid on that system and send kids to school to get an education is not enough because you're going to just mirror the isolation that exists in the community, and that in that hypothetical situation every action or inaction that the group controlling those decisions makes is a racially segregative decision because if they open a white school you know it's going to ultimately — or it's going to be identified as a racially identifiable school. If they open a black school it's identified as a racially identifiable school. If they open a mixed school it's going to become racially identifiable because of the population movement where that's possible to do.

A. Well, that's a long hypothetical.

Q. I'm sorry that it's long. It's the end of a long day.

THE COURT: That's not only a long hypothetical but excellent testimony by you, Mr. Greer, although I will regard it. Would you respond, Doctor?

A. I should like to respond to it in this fashion. I don't think it's necessary to go to hypotheticals. I think we have a situation before us in Dayton which is very concrete. I don't think that — I'm not aware of any city in this country in which anyone came upon it and found an existing city in which someone had magically created people and houses, and there were no forces or no policies or no laws or no economic factors that brought it to that point. Therefore, I think you have to deal with it in the context of how the situation did develop and then do whatever has to be undone to achieve a unitary system. Dayton was not a unitary system.

Q. Dr. Carle, you are obviously historically correct. The Northwest Ordinance so provided. But what I am concerned with is the placing then of schools located, for example, one mile apart, that in and of itself in your opinion is an act of segregation if that results in identifiably black schools and identifiably white schools?

THE WITNESS: If that is the foreseeable result, yes.

THE COURT: Okay. You may proceed.

BY MR. GREER:

Q. I'm not real sure that I got an answer to my hypothetical question. Wouldn't it be true that in that hypothetical situation by your definition, your philosophy or view of this subject, any action becomes by definition a racially segregative action?

A. Even in that extreme hypothetical situation, which I don't believe could exist in any city, it is conceivable that an action could contribute to the segregation of schools, but

I would not say – I would not characterize any action. You have described to me a totally benign – I think you have attempted to tell me about a totally benign situation.

Q. Now, I said any action except a decision that would affect the entire school district. So that if you had a situation where you had plus or minus 15 percent ratios on every school, that would resolve the problem obviously?

A. No, I have not, I think, at any point said that every action has to affect every school in the system. I said, however, that any action could affect every school, and it has to be examined in that light.

• • •

Q. I'm not asking you what you suspect. I'm asking you if you know of any city in the United States of America where there has been a racial balance of students throughout the system that has taken place except where there has been a court order or some other kind of order imposed from above on the system, and I would leave out, if you please, systems where there is only one school in the city.

A. Well, the moment I name any location you'll argue that there is some reason why it doesn't fit your definition, but there are certainly cities such as Berkley, California, or Evanston, Illinois who on their own took action to desegregate their schools. Whether effectively or ineffectively they did such action without imposition of the Court order.

Q. Before perhaps I didn't make myself clear. In Evanston and in Berkley you have situations where the imposition of the district-wide racial balance was done by order of the School Board; isn't that true?

A. Yes. I thought you asked me was there a place where a court order or some such – I was just giving you an illustration where a school board had done it.

THE COURT: Dr. Carle –

THE WITNESS: Am I misunderstanding the question?

THE COURT: I think you are, and I'm very interested in this because I think this is essential. Assuming a choice,

and assuming a lack of fiat by anybody, are there places where there is racial balance that you can advise me of?

THE WITNESS: And by racial balance you mean substantially every school has –

THE COURT: Yes.

THE WITNESS: – a balance?

THE COURT: Reflects the percentage of the total district.

THE WITNESS: Examples I might use, your Honor, may be based on old information. I go to Harrisburg, Pennsylvania, for example, which instituted a policy of assigning students by computor to the district and only in the district and only in the school, and at least from reports of several years ago this resulted in representation in each of the schools.

I am not aware – I have no reason to say in four or five years to know whether that has held at that, but I've given you examples of smaller communities in which there did not occur the kinds of patterns in large cities. I've given you examples of where school boards acted on their own. I've given you an example of another kind of plan, and I still am not sure I've answered your question.

Q. Well, let me see. I think maybe you have. I think we're about at the end of it. But if we subtract from what you told us the example where a Court has imposed a plan and then again subtract from what you told us the example of a small town which only has one school and no place to move to except in the neighboring community and subtract again those situations and only the ones that I know of are Berkley, California, and I confess I didn't know of Evanston, Illinois until today, where the School Board has imposed something of the order of the resolutions of December 19, 1971, you can't give us any examples; can you?

A. Well, I thought I gave you quite a few examples. But now what category am I still missing, one in which from your point of view there has occurred without any of the kinds of illustrations I've given you racial balance in every

school? I suspect that where that exists we haven't heard much about it because there hasn't been a suit and there hasn't been an issue raised, but I'm not willing to concede there are no places where people don't live together in some more harmony than has been indicated in this case.

Q. I'm not asking you to concede anything. You may believe in the Loch Ness Monster as far as I know. You personally have never seen one; isn't that fair enough to say?

A. I would say that of the cities I know of, yes.

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Q. If we take the Dayton situation, we've talked about the 1952 actions of the Board. In 1959 Roth High School opened with attendance boundaries that caused the initial flow of students there to be 75 percent one race and 25 percent of another; did they not?

A. Yes.

Q. And that was 75 percent white and 25 percent black; wasn't it?

A. That's my recollection.

Q. And that school became completely black; did it not?

A. Yes, it did, with the exception we noted previously, 34 and 18 students that existed, I think, in 1972.

Q. And the only alternative to that action whereby the design of the thing had opened up as a racially mixed school apparently intended by the Board as such would have been to racially balance all of the students in the high schools, wouldn't it, to avoid that event from occurring?

A. No, no, that would not have been the only —

Q. You could have adopted a high school zone plan of the type that we have today, I take it?

A. That might be an alternative. I think someone told me today that the Board was considering building a building that's been discussed for some years on the Miami River, so that would be a central location that would draw from

a variety of areas. There were certainly alternatives to a building at that point.

Q. If we look to the alternatives that the Board had before it in 1959 when it by intent opened up a high school with boundaries that made it a mixed school but reflected the race throughout the school system, the alternative to doing it that way and having that grand opening frustrated by the time passage and movement of people were, one, to scrap all the high schools in the city and build a big high school in the middle; two, to have some sort of random selection process so there would be a balance of students at the high school level in the existing buildings throughout the city or, three, to adopt some kind of pairing system such as we have now where you move students across town so that there will be a balance of students in the various high schools; isn't that true?

A. Oh, another possibility would have been, say, we admit high schools are operated as segregated schools and we are now closing a segregated school and relocating the building wherever, and whites and blacks will go to it together. We no longer are going to maintain separate schools.

THE COURT: Dr. Carle, I'm disturbed over this. How would Roth have been perceived in 1959 as a white or black high school?

THE WITNESS: With the substantial black minority —

THE COURT: Excuse me. Isn't it the other way? Wasn't it 75 white at the time of opening?

THE WITNESS: Yes. With the substantial black minority located in the area immediately adjacent to the black segregated Dunbar High School and in the context of what happened in all the previous actions of the Board, it would have to be perceived as the next black high school which indeed it became.

THE COURT: I see. So the ratio of students would not be significant?

THE WITNESS: Not in light of the conditions that existed at the time.

THE COURT: Well, now, Doctor, if this is possible, don't view it from 1977 because that's easy.

THE WITNESS: I understand.

THE COURT: It's very simple to point out all the errors. Upper courts have been doing that to me in this case for five years after the fact. But I'm concerned in 1959. How would that have been perceived?

THE WITNESS: I think it had to be perceived in exactly the same way Mr. French characterized the earlier fifties action on the elementary schools. Here is another racially changing area. We're putting a school there. That's going to be the next –

THE COURT: Racially changing area and the Board puts a school there.

THE WITNESS: With a substantial minority.

THE COURT: Draws the boundary lines in a fashion that there are 75 percent white students and does nothing further, and in your opinion the fact that that became 100 percent black was foreseeable and was a segregative act; is that right?

THE WITNESS: Yes, in light of what just happened a few years before. The pattern is repetitive.

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Q. Let me just ask a few more questions in the same area and then we'll be done for the afternoon, Dr. Carle.

You, or course, were not in the Dayton area in 1959 or in 1952; were you?

A. No, sir.

Q. You first arrived here in '68, I think you've told us?

A. Yes.

Q. Another example of this same kind of thing would be when the Board built Jefferson Primary School the year before you came here. You are aware that there was a conscious intent to place that so that there would not be an increase in racial isolation, but an increase in the schools serving a racially mixed student population?

A. Mr. Greer, my recollection is that there was great controversy over where a school might be located. It was located in an area that was racially changing, and I think even at that time foreseeable to become black.

Q. But the alternative locations that were discussed were locations that would have separted the white student population from the black student population in that school; isn't that right?

A. I can't recollect at the moment. I think that was discussed in the trial, that there was more than one side, but I think either side was foreseeably to the black.

Q. But the immediate effect or at least the intent expressed and what occurred was to add this school – at a location where it would serve a racially mixed student population instead of separating the mix of those races into two separate school sites, one predominantly white and one predominantly black; isn't that so?

A. I wish I could remember seeing a document to that effect. I wouldn't deny that was discussed. I'm sure there was great concern in the Dayton community at that time. I know there was great controversy in the community about that very issue. Whether or not that was the solution that was the one that would do what you say, I'm not certain.

Q. But again as with Roth in '55 and the elementary schools in 1952, because of the failure to adopt a system-wide approach to solving the problems of racial isolation, the racial mix that was achieved by the initial action dissolved through passage of time and movement of people; correct?

A. That's correct.

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[R. IV 243, Vol 2] Q. Dr. Carle, yesterday afternoon you discussed the period of time leading up to the adoption of the Board's three resolutions on December 19th of 1971. Do you recall that?

A. Yes.

Q. And from your description during that period the Board was receiving a variety of suggestions, opinions, recommendations and directives on the subject of racial imbalance from a variety of sources; is that correct?

A. That's correct.

Q. And indeed you've described the period as one of turmoil and pressure, especially from HEW and from black activist groups; is that right?

A. Surely.

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[R. IV. 244, Vol. 2] Q. It is correct, is it not, Dr. Carle, there was an election to the Board in November of 1971?

A. Yes, sir, it is.

[R. IV. 245-251, Vol. 2] Q. There was turmoil and pressure there as well as turmoil and pressure from HEW and black activist groups, I guess it would be fair to say?

A. Surely, and other groups.

Q. And it was known at the time that the election returns came in in early November, 1971 that the philosophy of the Board majority was going to be reversed as of the start of January of 1972; isn't that true?

A. Well, there certainly was speculation as to what an election would mean. There was, I think, no — nothing to predict what the Board might do as a board.

Q. All right. But the candidates who were elected and who became the majority members of the Board had campaigned on preserving the neighborhood school concept approach; hadn't they?

A. No, sir. Two of the persons elected were not of that background.

Q. The effect of the election was to make a Board majority that had come out strongly in favor of the neighborhood school approach; true?

A. That was one of the terms that they used, yes.

Q. Now, you've indicated that as far as December 19th resolutions were concerned that were drafted by you following this election that you did discuss those in advance with the Board's executive committee as it existed at that time?

A. Yes.

Q. And I take it that included Leo Lucas, who was the President of the Board at the time?

A. No, I'm sorry. I used the term executive committee, which means my executive committee as chief administrator. These were my administrators.

Q. And am I correct that the only Board member or potential Board member with whom you discussed the resolutions was Leo Lucas, who was then the Board President?

A. Leo Lucas asked that it be drafted, and I believe I recall talking mostly to Mr. Lucas. I won't say that no other Board member talked with me, but that's my recollection. It was primarily Mr. Lucas until such time as the resolutions were transmitted to the Board as a whole.

Q. Do you recall having any conversations with any Board member other than Leo Lucas prior to that transmission?

A. I can recall shortly before the resolutions were transmitted to the Board that Mr. Goodwin, who was — Let's see. I was going to say who had been elected to the Board. I have forgotten the circumstances, but at any rate there was a request for information about the resolution, it seems to me, on the day that they were being circulated. I think any answer, if it was Mr. Goodwin or Mr. Ridenour, or whoever may have asked, was that as soon as the copies were ready for or were duplicated for transmission that it would be sent to all Board members concurrently, and that was done.

Q. This would be December 18th or 19th.

A. No, it would be earlier than that; wouldn't it? Wasn't it the first week of December?

Q. Well, if the resolutions, I believe, were enacted or adopted on December the 19th of 1971?

A. I don't have that date before me, but it would be the week of whatever that Board meeting was.

Q. I'm sorry. The date was December 8 of 1971. So I've misled you.

A. Yes.

Q. But it would be approximately that time?

A. Yes.

Q. Just prior to that time and indeed on December 6, 1971 you and Leo Lucas had reviewed the proposed resolutions with Louis Lucas, the plaintiffs' attorney in this litigation, is that true?

A. I believe I stated that Louis Lucas joined briefly my executive committee meeting, and we were discussing the resolutions at that time and did ask Mr. Lucas questions at that time. I think on the same day Mr. Lucas – both Mr. Lucases were together, and so my answer I think is yes to your question. I just didn't want to indicate that there was any discussion at that meeting – I don't think that meeting involved Mr. Leo Lucas is all I'm saying.

THE COURT: Dr. Carle, is there not by statute or I presume statute legal counsel for the School Board?

THE WITNESS: The School Board in Ohio is permitted to have legal counsel. The statutory counsel for a school board is the county –

THE COURT: Prosecuting attorney?

THE WITNESS: Prosecuting attorney. However, most larger cities do not avail themselves because both of the time demands and because the attorney himself not having time. So there were two counsel to the Board at that time, as I recall.

THE COURT: And Mr. Louis Lucas was counsel to the Board?

THE WITNESS: No. Mr. Louis Lucas I testified had been in the city. Leo Lucas called and said that he would be available if we wanted to ask him any questions.

THE COURT: Isn't that a bit unusual to consult professionally an attorney who is not charged with the representation of the Board?

THE WITNESS: Oh, by all means, no. We weren't consulting him as an attorney. We had virtually every month or so been consulting with people who were involved with desegregation and/or legal aspects of desegregation around the country, and this was just one more opportunity to expose myself to a person who had a good deal of experience in the field.

THE COURT: You saw no impropriety in –

THE WITNESS: No. It was before a group of eight or ten people. No, I saw no impropriety. It was rather customary for us to try to share and fully review any information we got from any source.

MR. LUCAS: Your Honor, I might direct your Honor's attention to the earlier trial. This same discussion was had and your Honor made certain comments.

THE COURT: This continues to disturb me. I had forgotten I mentioned it, Mr. Lucas, but I have certain views as to the obligations and the legal representation of public bodies, and it does not include in my opinion the discussion with non-representing attorneys, and if I mentioned this, then I presume my concern is still the same.

MR. LUCAS: No, your Honor, your concern at the last hearing was that you saw no reason for it to be a problem, and you saw no relevance as to who was consulted or why. I can direct the Court's attention–

THE COURT: I guess I've grown older in the ensuing five years, but it doesn't bother me, not enough to make it worthwhile to discuss any further. You may proceed.

BY MR. GREER:

Q. Indeed, before the drafting of these resolutions you had been involved in discussions concerning the filing of a lawsuit of the type in which we're presently involved; isn't that right, Dr. Carle?

A. No, that's not correct.

Q. That's not correct? The resolutions of December 8, 1971 were on the books for a matter of a month; isn't that right?

A. That's approximately correct, yes.

Q. They were rescinded as soon as the new Board members who have been elected in November of '71 took office in January?

A. Yes.

Q. And according to Plaintiffs' Exhibit 8 the date of that action was January the 8th of '72; correct?

A. That sounds correct, yes.

Q. That was some nine months before the elimination of attendance districts and attainment of a balance, not only of racial composition but also of family income characteristics was to become effective in each building in the school system; isn't that true?

A. Yes. The plan which I approved was to go into effect with the immediately next ensuing school year. We were at that point in the middle really of a school year.

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[R. IV. 256, Vol. 2] Q. Well, without quibbling with you over whether you interpret or misinterpret the language here, it is a fact, is it not, that this resolution, as well as the other December 8th resolutions, were rescinded by the Board nine months before the stated effective date for rescission of attendance districts?

A. Yes. It is my understanding that that rescission was taken before the effective date of student movement.

Q. And no students in the Dayton School System were ever transported or moved or attended different schools under the December 8th resolutions; did they?

A. That's correct.

Q. Now, you talked to us yesterday morning about identifiability of schools.

Do you recall that?

A. Yes, I do.

Q. And as I understand, in your view a school becomes racially identifiable when the racial mix of the student body in that school becomes perceptibly different from the racial mix in the district as a whole; it that correct?

A. No, I do not recall testifying to that effect.

Q. Well, what makes a school racially identifiable.

[R. IV. 265-267, Vol. 2] Q. Let me refer to Defendants' Exhibit AU. This is an exhibit that was placed in evidence some five years ago in this case and represents Negro enrollments and faculty, 1951-'52, indicating that the black enrollment in the Dayton School System at that time was 6,628 students out of approximately 34,600, which would be about 19 percent of the system; wouldn't it?

A. Yes.

Q. And it indicates that of those black students approximately half were attending schools that had — or four schools that had a 100 percent black enrollment?

A. Yes.

Q. And approximately half were attending schools with mixed enrollments?

A. Yes.

Q. Now, it's now 25 years I guess that have elapsed since these figures. The percentage of black student population in the Dayton School System has risen from 19 percent to 54 percent; hasn't it?

A. Yes.

Q. And I think you confirmed yesterday that for the past — or for the past 20 years prior to the filing of this suit or for the past 25 years there was no real change of significance in attendance boundaries; correct?

A. I didn't dispute that general characterization.

Q. Now, if we look at these — these schools that were mixed schools in 1951 and 1952, Roosevelt at that time was 31.5 percent black; wasn't it?

A. Yes, it was.

Q. And to the extent that that was identifiable as a black school it would be because of the student composition, because the faculty was entirely white?

A. Yes.

Q. And if we look at Adams School, that was 29.3 percent black at that time; is that right?

A. Yes.

Q. And to the extent that would be perceived as a black school, it would be as a result of the student composition since the faculty was entirely white?

A. That's correct.

Q. And the same would be true of Central School, which was 33.9 percent black in student population?

A. Yes.

Q. And the same would be true of Drexel, which was 28.9?

A. Yes.

Q. Or Edison, which was 43 percent black and had an all-white faculty?

A. Yes.

Q. Or Irving, which was 46.6 percent black and had an all-white faculty?

A. Yes.

Q. Or Jackson, which was 35.9 percent black in student composition and had an all-white faculty?

A. Yes.

Q. Or indeed Weaver, which at that time was 67.6 percent black in student composition and had an all-white faculty?

A. And had reached the perceived tipping point on the part of the Board's and administration's policies and, therefore, it was now considered to be black, so black teachers were now being introduced to it. So it's the only mixed school having more than half black students and some black teachers.

Q. It had four percent of its faculty that was black?

A. That's correct.

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[R. IV 269, Vol. 2] Q. But you would agree with me, would you not, that if we go back to Defendants' Exhibit AU and take the example of Edison, that that school, if it were perceived as either a black or white school would be perceived as a black school with 43 percent of the student body black?

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A. I think it could be so perceived, yes.

Q. And, of course, you weren't here in 1951 or 1952, that's why you don't know whether it was perceived as such?

A. I was not here in those years, that's correct.

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[R. IV 272-275, Vol. 2] Q. All right. So I understand from that if every school in the Dayton system had been 97 or 98 percent black in student population, none of them would be perceived as black schools?

A. I think that it's fair to say that they would be perceived that way. I objected to answering on the basis of the reason. I don't think that is the only reason.

Q. But if we look then at Exhibit AN, in 1963 and 1969 there were 36 white and 68 black teachers at Roosevelt; weren't there?

A. Yes.

Q. And in 1969 and 1970, there were 44 white and 64 black teachers at Roosevelt?

A. Yes.

Q. And in 1970 and '71 there were 44 white and 65 black teachers at Roosevelt; right?

A. You probably have moved to the next table, right?

Q. It's the same exhibit, a couple of pages over.

A. Okay.

Q. And in 1971 and '72 there were 48 white and 32 black teachers at Roosevelt; were there not?

A. Yes.

Q. Whether or not assignment of teachers is relevant to racial identifiability of schools, let's look at Dayton at the time this suit was filed in April of 1972.

Am I not correct that on December 19th of 1969 the school board adopted resolutions stating that the staff throughout the entire Dayton School District would have a racial composition reflecting the total staff of the District as a whole?

A. That's correct.

Q. And indeed by December 19th of 1969 every teaching staff in the District was integrated to some extent?

A. To some extent.

Q. And since the adoption of that resolution on December 19, 1969, up to the time of the filing of this suit, the integration of the staff on this system-wide ratio basis remained in effect; isn't that right?

A. Yes. From '71 through the filing of the suit, is that what you are asking me?

Q. Right.

A. Yes. But did you say the assignment of the staff or the –

Q. The placement of the staff as the result of the resolution that was adopted in December of 1969 ended up with a faculty in every school in the district that was a rough approximation of the racial balance of the district as a whole; right?

A. No. I would characterize it that way in that an examination of the table we have just been looking at, for example, indicates that in '72-'73 the range of faculty assignments in the high school was from as little as 23 percent black to as much as 50 percent black.

Q. All right. So while it wasn't an exact numerical copy

of the ratio in the district as a whole, it was a balance plus or minus that ratio; wasn't it?

A. Yes. But of even more significance to me was that the 23 percent ratio was for Belmont High School, then a substantially white school, with Dunbar having the 50 percent black staff ratio, and Dunbar, of course, was 100 percent black school. So that the direction of the previous discrimination had not been totally altered and, of course, was still reinforced by the racial enrollments of the schools.

Q. Dr. Carle, while that may be significant to you, am I not correct that a number of the community looking at a school sees the color of the children that are attending that school, but in all likelihood isn't going to know the exact number of staff in that school or how many of them are white or how many of them are black?

A. Well, I'm tempted to be facetious, and I'll submerge that, but people see a lot of things in schools, Mr. Greer. I don't think that that's a relevant way to characterize these assignments. I'm not concerned – I don't think that casual observation is the only basis on which you classify or deal with this very serious problem.

THE COURT: Gentlemen, I had intended as a matter of procedure to allow presentation and cross-examination as wide as you wish. I am fast returning then to the position that I took in 1972. This perfection of schools is a very slippery concept. I've never understood by whom it is perceived or what the standards of perception are, but I have the decided feeling that you gentlemen are conducting the same disagreement that you had five years ago, and I strongly doubt that either of you is going to convince the other. Now, unless we have something new I would like to leave the area of perception of schools • • •

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[R. IV 278-285, Vol. 2] Q. Dr. Carle, is this a determination made by the Office of Education, Office of Civil Rights?

A. Yes. This was not a communication from, for example, the field investigators or the persons who composed the teams that came to us from the director, in this case the acting director of the Office for Civil Rights, the chief officer of that.

Q. And there are elaborate appeal procedures just as there are in the Federal Courts to appeal from a decision of the agency to the administrative process; is that correct?

A. Yes, that is so.

Q. Now, the Dayton Board in response to this document achieved a delay in the faculty reassignment by electing not to appeal; did it not?

A. That's correct, after a good deal of negotiation it was possible to –

Q. And actually you got a two-year period from 1969 to come into compliance; is that correct?

A. That is correct.

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Q. Dr. Carle, are you aware from your examination of the records that the Board for the first time assigned black faculty to these schools at the time these changes were made?

A. Yes, I am aware of it.

Q. Are you aware, Doctor, that optional attendance areas were created with respect to certain of those schools in the white areas of the zones?

A. Yes, I am aware of that.

THE COURT: Mr. Lucas, you are not again assisting. Would you identify this by dates? When are you talking about?

MR. LUCAS: Since 1952, 1954 period, your Honor, and I'm referring to the contraction of the boundaries of Garfield and McFarlane, the assignment of black children to the Jackson, Weaver, Edison and Irving Schools, and the creation of optional attendance areas in Jackson and Edison.

THE COURT: In the same period of time?

MR. LUCAS: Yes. That's in the period described – I believe it's summarized in Dr. Foster's testimony of what he

called the Westside Reorganization. And that was the area to which the cross-examination was addressed yesterday.

Have I sufficiently identified it for your Honor?

THE COURT: Indeed. You've also convinced me of the somewhat limited utility, Mr. Lucas. The events of 25 years ago, I suspect, would not affect any student in school at the moment and might not even have affected his parents.

MR. LUCAS: It might well affect the racial identifiability of the school if it's still around, your Honor.

THE COURT: It might affect the racial identifiability 25 years ago, but I would point out what I pointed out before, that concept of racial identifiability, Mr. Lucas, is elusive, and I don't think you need spend a great deal of time making it less so. You haven't succeeded to this point. Let's go forward, please.

MR. LUCAS: Your Honor, with all due respect for the Court –

THE COURT: Mr. Lucas, could you do me the favor of proceeding with your interrogation?

MR. LUCAS: All right. Is it permissible for me to continue the examination on that area?

THE COURT: Indeed, Mr. Lucas, you may proceed as you see fit.

MR. LUCAS: I wanted to make sure I wasn't transgressing from what you said.

THE COURT: I haven't ruled on any objection that might be made to your question. I'm merely pointing out to you –

MR. LUCAS: Your viewpoint.

THE COURT: I think your continuing – First of all, Mr. Lucas, I think these matters were discussed in quite some detail yesterday. I don't think you add much, but I'm not going to stop. You go forward.

BY MR. LUCAS:

Q. Again for the record, your Honor, I believe the question I had onboard, Dr. Carle, was whether or not you are

aware of the creation of optional attendance areas in connection with certain of those schools in white portions of the zone?

A. Yes.

Q. In light of those two factors, Dr. Carle, do you have a view as to the intention of the Board insofar as whether or not there was an intention to establish these as the next black schools in Dayton?

MR. GREER: Objection, your Honor.

THE COURT: When did you arrive here, Dr. Carle?

THE WITNESS: 1968, your Honor.

THE COURT: Sustained.

MR. LUCAS: I would make an offer of proof to the Court, your Honor. The witness has testified that he reviewed the books and records and the facts in this system and in connection with that he was required under the rules of the Court to answer certain questions on the requests of admissions, and that he made a further review at that time, and I think his answer is relevant.

THE COURT: You may proceed.

MR. LUCAS: May I have his answer as an offer of proof, your Honor?

THE COURT: You may proceed, Mr. Lucas. You've made your offer of proof. Would you ask your next question?

MR. LUCAS: Your Honor, I made no offer —

THE COURT: Mr. Lucas, I have sustained an objection now. Now, you ask your next question.

MR. LUCAS: Your Honor, I have not yet made an offer of proof as to what he will say.

THE COURT: You may get that offer of proof if you elect to, but I sustained the objection.

MR. LUCAS: Your Honor, I think the rule permits the offer of proof, if the Court wishes.

THE COURT: If you wish to do this out of the presence of the Court I have no objection. You may expand the record as you see fit.

MR. LUCAS: My problem, your Honor, is that I don't want my representation of his answer. I would rather have his answer.

THE COURT: I have sustained the objection. I would ask you to ask your next question, and you feel free to put anything in the record that you wish.

MR. LUCAS: I will through the witness rather than my representation.

THE COURT: Feel free, but not in the presence of the Court. Let's go forward.

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[R. IV 287-288, Vol 2] Q. Dr. Carle, if you will accept the amendment from little or no to no significant, I believe that was the substance of the question asked you or several questions in that regard. Do you recall that, Doctor?

A. Yes, I do.

Q. Thank you. Now, Doctor, does the factor of school construction involve boundary determinations?

A. Yes, it does.

Q. And are you aware of whether or not there were schools and school additions made in Dayton from the period 1954 to 1972?

A. Yes, there was an extensive construction program in that period.

Q. And are you aware of the pattern of faculty assignment during that period of time?

A. Yes, I am.

Q. Dr. Carle, from your examination of the records of the Board, including the construction and additions and the racial compositions of the school, were you aware that 22 of the 24 new schools constructed between 1950 and the present, 22 of them opened and 90 percent were black or white?

A. Yes.

Q. Does the establishment of a school unit as an ad-

dition or portable or what have you to an existing school site – does that speak to the boundaries in terms of the effect on boundary change or decision not to change with regard to such construction?

A. It speaks with great weight, Mr. Lucas, and I heard – in not thinking of that phase of boundary development I took a question of the context of older areas of the city.

Q. Dr. Carle, you've mentioned in your testimony on my examination that the minority Board members' plan, which was the plan submitted after the trial and the decision of the Court, and you mentioned that that was discussed with plaintiffs. Now, was that discussed with plaintiffs as to the substance, or was it discussed with the minority Board members?

A. It was discussed with the minority Board members, Mr. Lucas. I have had occasion to look at my testimony from yesterday and note that I took your questions in that series to be that you were asking about the minority Board members. I think you used the word plaintiffs. It was late in the afternoon, and I wasn't listening very • • •

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[R. IV. 304-305, Vol 2] THE COURT: But that would be more the exception than the rule apparently? Selection of a site and construction of a school is a relatively short process; is it not?

THE WITNESS: Well, I confess that I have never compared the date of acquisitions versus the dates of construction in Dayton as such, but I'm simply saying I think both patterns could be evident, that maybe a site was selected and purchased over, let's say, a period of two or three years versus one that might have been set aside for 10 or 12 or more years.

THE COURT: Would you feel that such things as the future of National Cash Register or the future of our defense posture as it relates to the Air Force or the future of

the construction industry are reasonably foreseeable events to either a superintendent of a school or the Board of Education?

THE WITNESS: I think in all of the instances you have cited there are considerably unknowns, political decisions, for example, on the part of government, economic situations. I recall a rather rapid change in the electronics versus mechanical computation thing.

THE COURT: Precisely. And this rather unrelated event has an effect upon Dayton; does it not?

THE WITNESS: Sure, indeed.

THE COURT: Then we can agree that a superintendent and a school board really are using their best guessing – guesstimates, perhaps, are they not, because no one is able to analyze the possibilities of something that might occur in the future, and yet based upon that structures are being built that will be used for at least one generation? Now, would you agree with me that this is a very difficult task?

THE WITNESS: Oh, I certainly would agree with you that it is.

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C. TESTIMONY OF JOHN TREACY.

[R. IV. 180-214, Vol. 2] Q. Could you state your name and address, sir?

A. My name is John J. Treacy. T-r-e-a-c-y.

Q. And what is your employment?

A. I am a Professor of Economics at Wright State University and director of the Center for Business and Economic Research.

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Q. Dr. Treacy, did you at the request of Mr. Krebs and myself make a study of certain optional zones in the Dayton school system?

A. I did.

Q. What questions did you address in your study?

A. I was asked to essentially look at two items. The first was did the high school option zone set up by the Dayton School Board affect the racial composition of the high schools with such zones and hence the racial balance of the school system as of 1972. And then I was also asked to look at were the option zones used as a means of segregation as the racial composition of the attendance zones changed.

Q. Four optional zones were specifically mentioned in the Court's original decision in this case, Westwood - Jackson, Fairview - Roth, Roosevelt - Colonel White and Kiser-Colonel White. Did you include all four of those zones in your study?

A. Yes.

Q. And what methodology did you employ in studying these optional zones?

A. I used the United States 1970 Census data, the third count, which is the smallest unit of analysis that the Census Bureau presents data. This is by city block in urban areas. And the methodology that I used was to first take the option zones as defined by the Dayton School System. This involved some map work, and I created a map overlay and then defined the attendance zones in terms of Census geography blocks.

After doing that I constructed a series of logical statements in a computer program which would then take the data and aggregate it by the relative school attendance zone. In effect then what I did was really aggregate the Census block data into respective attendance zones.

Q. All right. After you had transformed this Census block data, can you tell us what Census you used?

A. The 1970 Census on housing and population.

Q. Were there any other Censuses taken of the areas in question prior to the time of this lawsuit in 1972?

A. Yes. Well, the Census is taken every 10 years. However, the ability to manipulate the data on computer tapes is a relatively recent innovation in the sense that previous to

1960 the Census figure was available only in published form and it is very tedious if you're going to try to deal with all the blocks. For example, there's 2,800 some odd blocks within the City of Dayton, and if you're trying to, you know, manipulate that data by hand it becomes very, very tedious.

Q. So what you did was take the 1970 Census data from that computer?

A. Yes, in computer tape form. In other words, the data exists as a computer tape as well as in published form.

Q. Now, once you went through this technique of taking the Census blocks that could be fit into the optional zones, that were in question here, and tabulate all that information in the computer, did you prepare tables summarizing the findings that you made?

A. I did.

Q. And we have marked those tables as Defendants' Exhibit DA in this action.

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Q. Let's start with Table 1 of that exhibit, Dr. Treacy, and can you tell us what that table is and explain each column to us?

A. Table 1 deals with the racial composition of enrollment in the Dayton School District. The reason I looked at this first was in order to determine the degree of racial imbalance. I wanted to look at the racial composition of the school system as a whole, and I also wanted to write the data out in terms of high school attendance. I created a machine-readable file on the data for this as well. This data was originally taken from the exhibits that were put before the U. S. Supreme Court, I guess, in Brinkman vs. the Dayton School Board.

Q. Did this Table 1 involve any Census data or computer work?

A. No. This was data supplied by the school district to the Court in the previous hearing.

Going down the table, of course, the first column simply gives the year for the data. The enrollment for all schools

is in the second column. Blacks enrolled in all schools is the figure in the third column. The percentage of blacks in the school system is in the fourth column. The high school enrollment is in the fifth column. The number of blacks in high school is in the sixth column, and the percentage of blacks in high school was in the seventh column.

Q. And again what was the significance of this table in connection with your study?

A. Well, it showed that the percentage of blacks as in the school population was increasing steady over time from slightly over 31 percent in 1963 up to almost 50 percent in 1975. It also for the purposes of my study pointed out that there was some significant difference between the overall percentages of blacks in the high school. There tended to be fewer black students in high school. This was probably the result of the fact that black families in the City of Dayton tended to be younger than white families. So that in a sense the black families had youngsters that were in lower grades.

It might also reflect, of course, different retention rates as well in the school. However, by 1970 the discrepancy between the racial balance in the school system as a whole and the racial balance in the high school is relatively small. It was only about a four percent difference.

Q. Now, if we could turn to Table 2, could you explain that table to us?

THE COURT: Before you leave this may I ask a question? A quick examination indicates that the ratio or that the difference has steadily decreased over this period of time; am I correct?

THE WITNESS: Excuse me. I didn't hear your question, sir.

THE COURT: Well, all right. It appears that the difference between the total number of blacks in the system and blacks in the high school has steadily decreased, that in 1963 it was at the order of some six-plus percent. In 1975

it is at the order of 1.4 percent. Do you find any significance to that?

THE WITNESS: This simply, I guess – the result of this is the increasing percentage of blacks in the Dayton City population and hence this school district.

THE COURT: No, you don't understand what I'm saying. There is a difference, a significant difference that you just mentioned before between the number of blacks in all schools and the number of blacks in high school. In 1963 I suggest that it's something over six percent.

THE WITNESS: Yes.

THE COURT: In 1975 it's at the order of 1.4 percent. In your opinion, and perhaps I'm premature in asking this question, but I would also point out that this Court's order abolishing optional zones occurred sometime in between those two points.

THE WITNESS: Yes, sir.

THE COURT: Does that have any significance?

THE WITNESS: No.

THE COURT: You may proceed.

BY MR. GREER:

Q. I take it from what you have told us as far as the change in those ratios is concerned, as the younger black families with younger children would grow up, those children would end up in high school; isn't that right?

A. Yes.

Q. Now, if we go to Table 2 can you tell us what that table is, how it was composed and then go through it column by column so that we'll understand it?

A. Table 2 represents the population of the Colonel White High School attendance zones. I used the word plural there in 1970 because I broke the population in the attendance zones into two components. One was the basic zone; that is, where the students that lived in that zone were directed towards Colonel White alone and then there were two other zones that were included.

One was the option zone with Roosevelt High School where the population that was living in this area had the option of sending their children either to Colonel White or to Roosevelt High School, and the third component was the option zone with Kiser High School, where the population living in that area had the option of sending their children either to Colonel White High School or to Kiser High School.

Q. All right. Now, the first column you have marked is headed Code. What does that mean?

A. The code was simply the variable that I created in the computer, and the logical statements assigned the code two blocks on the basis of the logical statements that I had issued in the program. So that the code statement I guess is more of interest to myself rather than perhaps to any of the readers in this court.

Q. It's simply something that would key you back to your data?

A. Yes. This in effect was the variable that the computer used to aggregate the data.

Q. All right. And do you have your printout data with you today?

A. Yes.

Q. Now, Column 2 is headed Total Population.

I assume that simply means the total population in each of these three zones, the two optional areas and the basic zone?

A. Yes, this represents the U.S. 1970 count of population that existed within each of these areas.

Q. Now, is that an estimate or is that by actual count of the blocks in the areas?

A. No, this is the U.S. 1970 census population count. It is not an estimate.

Q. If we then moved to Column 3, that's headed Black Population and again gives population figures for each of these three areas; is that correct?

A. Yes.

Q. Is that an estimated figure or did the 1970 census

actually indicate whether the population in those areas was black or white?

A. It is a count of the black population.

Q. Column 4 is headed High School Age, and again gives us a figure for each of those three areas.

Is that an estimate or did the 1970 census data actually indicate how many of the population in those three areas were high school age people?

A. That is an actual count of the number of people living in the areas between the ages of 14 and 18.

Q. Now, while the 1970 census data will give us actual figures on the number of white and the number of black people living in a given block and on the number of high school age people living in a given block, does it provide data as to how many black or white high school age people there are in a given block?

A. No, this is one of the difficulties in using the third count data. The third count data which gives data for a very small geographic area, a city block, will not give as complete data as other counts. This is in line with the U.S. Census Bureau's provision protecting confidentiality.

The U.S. Census Bureau will not tabulate data for certain variables on a very small area, because they feel that this is likely to violate confidentiality of the response.

Q. So if we take the figures on the basic Colonel White attendance zone in 1970, we have an actual count that there were 253 black people living in that attendance area, but we have no way of determining whether as a matter of fact any of those 253 black people in that attendance area were high school age, sub-high school age or adults; is that correct?

A. No, that figure had to be estimated.

Q. Now, let's move with that background, move to Column 5 of your table for me.

That's headed Percentage Black High School Age. Can you explain that for me?

A. In Column 5 I estimated the percentage of black high

school age children by apportioning the high school age population, dividing it in the same manner that the black population existed within the total population. I did this by simply dividing Column 3 by Column 2. So that this is an estimated figure using the assumption that the number of black high school age children in the population existed in the same proportion as black population existed in the total population.

Q. Then if we move to Column 6, which is headed Possible Number of Blacks High School Age, can you tell us what that column represents and how it was compiled?

A. That was simply taking the estimated percentage of blacks and multiplying it by the high school age population.

Q. Is the resulting number any more than an estimate of the maximum number of high-school age black students that might have been in that area?

A. Yes, that is the number, 22 is the estimated number based on the assumption that the population was apportioned among high school age as it was in the general population.

Q. All right. And as far as that figure's accuracy, I assume that would be affected by whether there were in fact any kids in that area or whether they were adults that represented the 253 people, or whether those children were attending public school or private school and other factors?

A. Yes. The figure in Column 6 represents a maximum number of possible high school-age children. It should not be mistaken or confused with the number of pupils that actually existed in the system.

It was my desire when I was constructing these tables to try to estimate the maximum impact of the option attendance zones in terms of its segregative effect. So that in a sense this is representing an upper boundary level. It doesn't represent an actual count of the students that existed in the system.

Q. At the lower right-hand part of this Table 2 there is a set of figures under the heading "Colonel White Enrollment 1969-1970."

Where were those figures taken from?

A. Those figures actually came out of the file that was used to construct Table 1.

In other words, this was an actual count of the enrollment that existed in Colonel White in the academic year 1969-1970. I chose this year because it corresponded, of course, with the 1970 Census figure which was taken as of April 1st, 1970.

Q. All right. Is that the reason that you didn't use the 1972 school year when this was –

A. That's right. In other words, I wanted to compare apples with apples.

Q. And what were the figures in 1969 and '70?

A. The total Colonel White enrollment in the academic year 1969 and '70 was 1,741 total.

I imagine that this was the ADM as it is known in the school business, this is the average daily membership, which is the figure that the school district has to supply to the State Department of Education in order to receive their state funding.

The number of blacks was 503, the percentage of blacks in the school system was 29 percent.

Q. And then on the right-hand side of the lower half of the table you have some figures under the heading "Possible Enrollment Without Roosevelt Option Zone."

Can you explain what those figures are?

A. Yes. This actually represents the crux of the question that I was asked to address. And that is what would have happened to the enrollment in Colonel White High School if the option attendance zone did not exist. In effect, the – what I did was say suppose the option zone had been taken out of the Colonel White area and assigned to Roosevelt, what would the effect have been on the Colonel White enrollment?

This would have – could have reduced the total enrollment in the school to 1,004. It would have removed a large number of black students from the system. It would have left 83 black students in the Colonel White High School. And it

would have reduced the black enrollment to eight percent. In other words, creating a racially imbalanced school.

Q. Now, I notice in your Column 6 at the top of this page the estimates as to the maximum number of black students in these various zones. You have 22 in the basic zone and 420 in the option with Roosevelt, none in the option with Kiser. So there would be a possible total of 442 students, is that correct, of high school age?

A. In other words, the estimated maximum number of black high school students in that area was 420. What that shows is that the – a large percentage of the black enrollment that was going to Colonel White High School actually resided in the option zone, not in the basic attendance zone. The effect then of removing that option zone from Colonel White High School would have meant that they were no longer really available as a pool of students for the Colonel White.

Q. If I compare the figures in your Column 6 with the actual current white enrollment in '69 and '70, it appears that the possible number of black students of high school age living both in the basic zone and the optional area with Roosevelt was 444, while there 503 black students in fact attending Colonel White.

What is the explanation, if any, for that discrepancy or apparent discrepancy?

A. That discrepancy immediately came to my attention when I was performing the analysis. I started to ask the same kind of questions and found that at that time there was a freedom of enrollment plan in operation within the Dayton School System which allowed students to cross the high school attendance lines. Again the criteria I was told were that students could elect to go to another high school that offered courses or curriculum that weren't available within their basic attendance zone, at the high school within their basic attendance zone. So that in effect it shows that a number of the black students that were attending Colonel White High School at the time did not come out of either the basic attendance zone or the option attendance zone. There were

some black students actually enrolled in Colonel White in 1970 that came from outside of those two zones.

Q. Does that also explain why the possible enrollment figure in your computation here of what it would have been without the Roosevelt optional zone refers to 83 potential black students instead of 22 possible students shown in the basic zone itself?

A. Yes.

Q. That's again freedom of enrollment?

A. That's right. That's the enrollment that could have been attributed to the Freedom.

Q. What is the significance of these figures then that are shown on Table 2, Dr. Treacy, in your opinion?

A. In my opinion it shows that the option zone with Roosevelt by 1970 was including a geographic area in the attendance zone that was integrating Colonel White High School.

As a matter of fact, the existence of the option attendance zone was having an integrative effect by 1970.

Q. Let's turn to Table 3. Is this table structured in the same manner as Table 2?

A. Yes, with one noteable exception, I changed Column 3 to the count of the white population, and I conducted the analysis for Roosevelt High School attendance zone in terms of the counts of white population rather than black in order to highlight the situation there.

Q. Table 3 relates to an analysis of the population in Roosevelt High School attendance zones in 1970; does it not?

A. Yes.

Q. And there instead of a basic zone instead of two options you had a basic zone and the one option with Colonel White that we have discussed from the Colonel White point of view?

A. Yes.

Q. And are the six columns broken down and either taken

from Census block data or estimated as you had estimated the first?

A. Yes, the first three columns actually represent data that was taken off the third count summary tape file. The Column 5 and Column 6 were constructed in the same manner as were the – on the previous table. The only thing being that Column 5 dealt with the percentage of white high school age children and the possible percentage of white high school age.

The count was in Column 6.

Q. All right. Again, the basic block data from the census indicates that there were 997 white people out of a total population of 18,368 living in the basic zone area. Is there any way of knowing through census data whether any of those 997 people were high school age people?

A. No. As I mentioned earlier, the racial composition with regard to age does not exist in the third count data.

THE COURT: Excuse me just a moment. Up to a point I was following this, and then my limited mathematics begins to take over. I have some problems. It appears to me, if I understand this, that unless you have a very large number of people who are neither black nor white you have a total of six people who attend high school from the basic zone. Now, that's obviously impossible, and I don't understand it. If you'll look at Column 5 of Table 2 you have one black high school aged person.

THE WITNESS: That's one percent, sir.

THE COURT: Excuse me. I beg your pardon. Well, why do we then only have a total of six percent in the basic zone of black and white combined? Is that six percent of the total population are high school age, is that what you are saying?

THE WITNESS: That's right.

THE COURT: I see. Thank you very much. You may proceed.

MR. GREER: Before I proceed I must confess I got lost. Where is the six percent figure?

THE COURT: One plus five. There is one percent black, five percent white.

MR. GREER: Now, I hope we are all back on the same track, Mr. Treacy.

THE COURT: That much I can do in my head.

BY MR. GREER:

Q. Did you again with regard to Roosevelt get the figures as far as the school year in which the 1970 census took place as to actual enrollment and then based on your block data and the maximum estimates from that workout a possibility of what might have happened had the Colonel White optional zone been a part of the Roosevelt High School attendance zone rather than being an optional area?

A. Yes, I did.

Q. And what did you find?

A. The data on the lower left is the actual enrollment figures at Roosevelt High School. They show 1703 students were the total enrollment, and 700 of those were black. So that it was virtually a 100 percent black enrollment in the 1969-70 academic year.

On the right-hand side I estimated what would happen to the enrollment in Roosevelt High School had the option zone been folded into the Roosevelt basic zone. This would have shown an increase in enrollment to 2440 students. 2123 of them would have been black, and this still would have left the high school racially imbalanced with 87 percent of the student body black.

Q. What is the significance of these figures, especially when compared with the figures in Table 2?

A. The significance of these figures is that there were not by 1970 enough white high school aged children left in the option attendance zone to integrate Roosevelt High School. However, there were enough potential black high school aged

students in that optional attendance zone which had a significant impact on integrating Colonel White.

Q. Let's turn to Table 4, which relates to the population in the Kiser attendance zones in 1970, and again this data is arranged in the same manner as you computed and arranged the data in the previous two tables; is that right?

A. Yes.

Q. Here we again have a basic zone and one optional zone, that being the option with White?

A. Yes.

Q. I should say Colonel White in the context of this case.

A. This table is identical to Table 2 with respect to all the headings.

Q. And then you once again put down the figures for the enrollment in the year from which the 1970 census was taken and figured out a possible enrollment if the option zone with White had been completely included in the Kiser district?

A. Yes.

Q. What did you find?

A. There were only two blacks living in the option zone, so that out of the total population in that option zone – that's Census Tract 1. It's the area that lies up again the river, I guess, and it's partially enclosed by I-75. There were simply no blacks of any significant number in the option zone. So it had no effect one way or the other.

Q. And I see from your figures that the actualities and the possibilities both would produce a five percent black spread of population?

A. Yes. In effect what I was saying here was that the shift in this option zone either between Kiser or Colonel White would have had no effect on the racial balance of either school.

Q. Now, you haven't prepared for us a table with respect to Westwood-Jackson. Can you explain to us why you didn't do that?

A. Well, under my original injunction I was told that I

had to prepare this material for, I believe it was, an October 10th date, and crashing, I simply didn't have time at that time to put out the table, and I guess I ran out of gas. I have the results in a printout, but they essentially show that between Westwood and Jackson Elementary Schools the same result would have obtained as in the Kiser-Colonel White case; that is, in this case in the Jackson-Westwood Elementary area the population of both school attendance zones was totally black. The population in the option area was almost totally black. It would have had no effect on the racial balance of either school system had you shifted the option attendance zone into one basic area or another.

Q. Likewise, you've prepared no table in connection with the Fairview-Roth optional attendance area. Can you explain to us why no table was prepared with that?

A. Again, there were so few students out of – that area has very few students. I think there were two or three students in the area. It simply would not have any significant effect on the racial balance.

Q. Now, could you explain for us Table 5 of this exhibit, which is the last table and appears to be set up a little differently from the others?

A. Yes. Table 5 really dealt with the dynamic aspect of the question. By this time, of course, I had zeroed in on the Roosevelt-White option zone because this was the one option zone that I found where the existence of the option zone did have an effect on the racial balance if you shoved it from one school to another. And I wanted to look at the racial composition of that option zone earlier in time, like in 1960.

Now, in 1960 I did not have the third count Census tapes for 1960. So I defined the option zone in terms of tracts. Actually the tracts overestimate the population because the attendance zone does not actually contain all of the blocks that exist within these tracts, but again I was looking at it for a maximum figure.

Q. In other words, the reason that we would have a maxi-

mum figure here is not because of an estimate but because the actual blocks that compose the optional zone would be less than the area covered by the 1960 tracts?

A. That's right. In effect my earlier analysis, which dealt with blocks geographically defined the attendance zone exactly. In other words, only the blacks that actually existed within the zone were put into the zone. In Table 5 you actually have blacks included because the tracts overlapped the attendance zone in some areas.

Q. And I take it the first two columns are just comparing numbers on the Census tracts from 1970 to 1960?

A. Yes. The first two columns – the first column defines the 1970 tract number. The second column defines the 1960 tract number. The third column –

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Q. What about the third column? What is that?

A. The third column is the black population count that existed within each of those tracts in 1960. That shows that there was a maximum black population within the attendance zone, the optional attendance zone of 316 people in 1960 and –

Q. And then if we look to the White-Kiser optional zone there was a maximum black population of three according to this?

Q. And that would be at any age level?

A. That's right.

Q. Then what is the last column on this table?

A. The last column is not an estimate. The last column is an actual count because when it comes to tract data on the tract level there is a racial breakdown given for the tract data. So this is not an estimated number.

This gives the actual count of black high school aged children that existed within these tracts as of 1960, and it showed that there was a total of 32 black high school aged children that lived within the Roosevelt-Colonel White optional attendance zone in 1960.

Q. Is that what it shows, or does it show they lived within the tract that included that area?

A. Yes. In other words, the largest possible number of blacks that lived within that area in 1960 was 32. There could have been less because some of these 32 might have actually lived in those parts of the tracts that weren't in the attendance zones.

Q. Then what was the count in White-Kiser as of 1960?

A. There were none.

Q. What is the significance of the figures that you have in Table 5 compared with the 1970 figures that you put together?

A. Well, this showed that there was a dramatic change in the racial composition of the Roosevelt-Colonel White optional attendance zone between 1960 and 1970, because in 1960 there were only three possible black high school aged students that could have lived in that zone, but by 1970 there were 420. The fact that the School Board did not fiddle with the option attendance boundaries during this period would indicate to me, if they were using the option attendance zones as a device to maintain racial segregation, they were either very inept or didn't set up the option zones for that purpose.

Q. As a result of your study do you have an opinion as to the effect of these four optional zones on the racial composition of schools in the Dayton School System in 1970, a few years before this suit was filed?

A. Yes. By 1970 the option zones were affecting the racial balance mainly of Colonel White High School, and the effect was to integrate Colonel White High School rather than segregate it.

Q. Do you have an opinion as to whether the optional zones that you have studied were used as a means of segregation as the racial composition of schools changed during the ten-year period before 1970?

A. No, because – excuse me. Phrase that question again. I'm not sure I –

Q. All right. Do you as a result of your study have an opinion as to whether the optional zones were used by the School Board as a means of segregation as the racial composition of these schools changed?

A. No, because Table 5, of course, when taken in conjunction with Table 2 shows that there were dynamic changes in the racial composition of the attendance zone area, and the School Board did not change the attendance zone area when this took place.

Q. When you answer my question "No" did you mean no, you didn't have an opinion, or that your opinion is no, that they were not used as a means of segregation?

A. No, they were not used as a segregative device.

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Q. What is your field of expertise, sir?

A. I have a number of fields of expertise within economics; public finance, the analysis of large socio-economic data bases, price theory.

Q. Price theory?

A. Yes.

Q. Your publications include a study of energy conservation?

A. Yes.

Q. Location of mobile homes?

A. Yes.

Q. Surface mining and the effect of that on — impact on energy in the Ohio real estate industry?

A. Yes.

Q. And another study, mobile homes in Ohio?

A. Yes.

Q. And you have a study, Collect Negotiations and Work Stoppages?

A. In public schools, yes.

Q. And power equalization in school finance?

A. Yes.

Q. Have you done any studies of school segregation?

A. No.

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[R. IV. 235-239, Vol. 2] Q. Looking at Table 3, sir, the bottom of the page, would I be correct that looking at Roosevelt High School attendance zones in 1970 and including within the optional attendance area, you have a total possible enrollment of 2,440?

A. Yes.

Q. That's looking at it as though it were a single geographic zone and did not have an optional area taken out?

A. That's right.

Q. And the population is 2,123 black? When I say population I mean pupil population?

A. Yes.

Q. Would I get the white population simply by subtracting those two numbers?

A. The possible white population of high school age, yes.

Q. That's possible in the sense that if you included the optional area within it?

A. Yes.

Q. That would give me 317 whites; would it not?

A. Yes.

Q. So looking at Table 3 in 1970, 317 whites got out of the optional attendance zone and went to school at either Colonel White or some other school; is that correct?

A. They didn't get out of the optional attendance zone. They were in it.

Q. I'm sorry. They got out of going to Roosevelt; didn't they?

A. Yes.

Q. Leaving Roosevelt 100 percent black; is that correct?

A. Yes.

Q. If they had been in Roosevelt it would have been 87 percent black?

A. Yes.

Q. So looking at the optional attendance areas having been taken from Roosevelt the option provided an outlet for 317 whites to get out of the school; is that correct?

A. Yes.

Q. Now, suppose in 1970 you had moved the geographic boundary of the option or the old portion of the Roosevelt zone, whatever you want to call it, moved that north. That would have taken in terms of demographic data more white students; would it not?

A. Do you mean if they had included the option zone in the Roosevelt basic attendance zone?

Q. No, no. Look at the Roosevelt zone with the option as part of it, and if they had moved that northern boundary further north that would have taken in more whites in terms of demographic data; isn't that correct?

A. Yes.

Q. And that would have brought more whites into Roosevelt if they hadn't had an option to get out; is that correct?

A. It would have created the possibility, yes, of more white students in the Roosevelt zone, yes.

Q. Assume, if you will, sir, that a transfer policy – an option is a form of a transfer policy; would you agree with that?

A. I'm not certain I follow.

THE COURT: It's a choice. Okay. Those transfers and options are choices, right. Let's go.

Q. Suppose you had adopted a criteria where only those transfers which promoted integration would have been granted from the optional area. That would have still permitted the black students who exercised the option to go to Colonel White; is that correct?

A. Yes.

Q. But it would have prohibited the whites in the option area from going to Colonel White; would it not?

A. Yes.

Q. Now, talking in terms of the effects of an option, if

an option over a period of time has permitted whites to avoid attendance at one school and go to another school – I don't mean to suggest that's the only thing it did, but let's do this in pieces, if we can. Does the fact that whites are allowed to clear out of the black attendance zones, in this case Roosevelt, tend to make Roosevelt a blacker school?

A. I'm not sure I'm following the question, sir. Would you please –

Q. If you let whites clear out of a school zone by creating an option – and I'll put aside what black students may have an opportunity to do as well. If you let those white students clear out of the blacker school, does it not make that school blacker yet?

A. Yes.

Q. And so if you ended up with Roosevelt as a 100 percent black school in 1970, 1972, would not the effect of the option still be present?

A. The option that you've assumed?

Q. Yes.

A. Yes.

Q. An optional attendance area, you would agree, has effect on at least two schools; does it not?

A. (Indicates affirmatively.)

Q. And directing your attention to Table 5, let me ask you a brief question there. To be sure I understand it, the Column 1970 tract number is simply put there as a cross-reference?

A. Yes.

Q. This is really a 1960 table; is that correct?

A. Yes.

Q. And there was – or do you know whether or not there was block data published, not on tape, but published for 1960?

A. Yes.

Q. So you could have used the blocks for your analysis hand counting them as you did and identifying them with the overlay; is that correct?

THE COURT: You have gone through this, Mr. Lucas, and I understand what is involved. Would you proceed, please?

MR. LUCAS: Well, that's not my basic question.

THE COURT: I understand, but you are going into methodology and that has been explained.

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D. TESTIMONY OF ROBERT B. RICE.

[R. IV. 375-383, Vol. 2] Q. Will you state for the record your name and address, please?

A. Robert B. Rice, 6212 Dayton Farmers Bill Road.

Q. And how long have you resided at that address?

A. Fourteen years.

Q. And where did you reside prior to that time?

A. 1608 East Fifth Street.

Q. Is that in Dayton, Ohio?

A. Yes.

Q. How long have you resided in Dayton, Mr. Rice?

A. Sixty-six years.

Q. Mr. Rice, you have not testified in this cause before; have you?

A. No, I haven't.

Q. Now, Mr. Rice, have you compiled and/or written the history of blacks in the City of Dayton?

A. Yes, from 1796 to the present.

Q. And, Mr. Rice, does that history include a section regarding education?

A. It does.

Q. And does this section include a history of racial segregation in the Dayton Public School System?

A. Yes.

Q. And, Mr. Rice, would you relate to the Court the instances of such segregation?

THE COURT: Beginning when, Mr. Austin?

MR. AUSTIN: I would like for you to – as compiled in your study, and then I would like to – your Honor, the purpose of asking him to give a general overview of the segregation in the Dayton Public Schools is a background to get to the initial question of the intentional nature of such.

THE COURT: Mr. Austin, I am not going to permit a testimony that begins, for example, with the Northwest Ordinance of 1798. I believe that there is a point in time where this becomes so attenuated that it has no significance to this inquiry. That's why I asked you with what date do you propose to begin.

MR. AUSTIN: We can begin at the 1900's, if that would –

THE COURT: No. Is that your objection, Mr. Greer?

MR. GREER: That's my objection as well.

THE COURT: I will sustain the objection.

MR. AUSTIN: Your Honor, we would only state that there has been a course of segregative practices and policies within the Dayton School System, and we feel that in order to substantiate the intentional nature of the present effects of such policy that it would be pertinent to relate this history to the Court.

If the Court would allow us to start at a more contemporary time, we would ask the witness if he would relate to the Court any acts of segregation which he has either observed himself or thruogh his studies since 1940.

MR. GREER: I would object again, your Honor.

THE COURT: I'm going to sustain the objection and, Mr. Austin, I'm going to limit my inquiry to 1954, and I will be happy to hear anything that you have to present subsequent to that date.

BY MR. AUSTIN:

Q. Okay. Would you relate such instances of segregation in the Dayton Public School System since 1954?

A. Well, there really isn't that much since 1954.

Q. Okay. Mr. Rice, I would like for you to state this for me then: Could you tell the Court what is the – or in 1972,

what was the effect of past segregations in the Dayton Public School System?

MR. GREER: Objection, your Honor.

THE COURT: I will overrule the objection.

A. Would you state that again, please?

Q. Could you state what was the effect of past segregation in the Dayton Public School System in 1972?

A. Are you talking about the results of what had happened in the previous years?

Q. Yes, sir.

A. Well, we had definitely a segregated school so far as faculty and students were concerned.

Q. Mr. Rice, at that time did we have racially identifiable schools?

A. Yes, especially in the West Side area.

Q. And were there also racially identifiable housing patterns in the City of Dayton?

A. That is correct.

Q. Mr. Rice, from a study of your history, could you describe to the Court what, if any, relationship does the segregation in the schools or the effects of segregation in the schools have on the development of segregated housing patterns in Dayton?

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A. Are you talking about segregated patterns of the schools in relation to the housing?

Q. Yes, sir.

A. Now, Dunbar High School, Roosevelt High School in particular became all black due to the segregated housing patterns. Also grade schools such as Garfield, Willard, Wogaman, Highview and some of the grade schools in the Westwood area, the residential part. The schools automatically became black because of the residential segregation.

Q. Now, Mr. Rice, you are familiar with the construction of the new Dunbar High School; are you not?

A. Yes.

Q. And that high school was considered to be an all-black school?

A. Yes.

Q. And it was built in an area that has what type of housing pattern?

A. Entirely black.

Q. And since the construction of the school, has that housing pattern changed in any way?

A. No.

Q. Did it become more black, was there more construction in that area?

A. Almost entirely black.

Q. This was after the construction of the school?

A. That's right.

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Q. Mr. Rice, I would like for you to tell me whether or not the segregative policies and practices of the School Board affected the housing development of these neighborhoods, or the patterns?

A. Would you repeat that again, please?

Q. Whether the segregative policies and practices of the School Board affected the racial development of the neighborhoods?

A. I'm quite sure it did.

Q. And would you explain to the Court your answer, please?

A. Well, as they — the schools become more segregated, why, the housing patterns became more segregated. This was interlocking, interwoven together. You are bound to have the two of them locked together irrevocably.

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Q. As you have indicated, Mr. Rice, from your observations, the schools in Dayton took on their complexion as being predominantly black schools or predominantly white schools

as a reflection of the residential patterns in the community; isn't that right?

A. That's correct.

Q. And your own school was Stivers; was it not?

A. Yes.

Q. And prior to that you attended Ruskin?

A. That's correct.

Q. And those were schools that were in the neighborhoods where you lived?

A. That's right.

Q. And they were predominantly white schools; weren't they?

A. Yes.

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E. TESTIMONY OF MILEY WILLIAMSON.

[R. IV. 384-387, Vol. 2] Q. Would you state for the Court your name and address, please?

A. Miley O. Williamson, 1421 West Fifth Street, Dayton, Ohio.

Q. Not being offensive to the lady, but how long have you resided in Dayton?

A. Around 50 years.

Q. And did you attend the Dayton Public Schools?

A. Roosevelt High School.

Q. And when did you attend Roosevelt High School?

A. I graduated in '29.

Q. And, Mrs. Williamson, what is your present occupation or position?

A. I'm executive secretary to the Dayton Branch of the NAACP.

Q. And how long have you held that position?

A. Around 30 years.

Q. And, Mrs. Williamson, in your capacity as the executive secretary of the Dayton Chapter of the NAACP, have you had

an occasion to appear before the Dayton Board of Education to protest or complain about segregation in the Dayton Public Schools?

MR. GREER: I will again object, your Honor, unless we have the time period.

THE COURT: Well, I will overrule the objection and ask after this preliminary question is answered that you then identify the time.

THE WITNESS: Many times.

BY MR. AUSTIN:

Q. Okay. And will you state for the Court when such appearances were made and the nature of the protest, if you will?

A. Well, we objected to the two swimming pools at Roosevelt High School, there was a swimming pool, one for blacks and one for whites. Then there was the –

Q. Will you give a time frame for this?

A. I'm sorry, I cannot give it, no, I cannot. But I know that we did. Another occasion –

Q. Okay. After making such a protest, what occurred, if anything?

A. They eliminated the two swimming pools. Then it was for boys and girls, not for black and white after we made a protest.

Q. And do you recall making any further protest to the Board regarding segregation in the schools?

A. Yes. They transferred the children from Shawen Acres, from Shawen Acres over to Dunbar and Garfield School. We protested that.

Q. And were there any other occasions when you –

A. Yes, we protested the building of Dunbar High School.

Q. And will you explain the nature of this protest?

A. Well, we felt – in those days that particular section of –

THE COURT: Excuse me, when was that?

THE WITNESS: Dunbar was opened – Dunbar High School I think was opened in '62, I believe, and prior to that,

to the building of that school, the NAACP protested the building of the school in that particular area because, if I recall, this was supposed to be the worst slum area in the country. There was a garbage disposal unit, the cemetery was there, there was a dog pound there, and for many reasons – those were some of the reasons that we protested the building of that school. And then on the other hand we figured that it would be another black school.

Q. And what did the School Board do as a result of that protest?

A. They built the school.

Q. Could you tell the Court what the – First of all, in terms of trying to put a time frame, I would assume that the Roosevelt incidents or the complaints about the segregation facilities in Roosevelt was in the '30's and '40's?

A. Oh, yes.

Q. And the Shawen Acres matter was in the '40's?

A. Yes, and '50's, yes.

Q. And the Dunbar situation was in the late '50's?

A. Yeah, prior to the building of the school.

Q. Prior to the building. And each time you made a protest to the Board and the Board either did or did not take action as a result of the protest?

A. They did not take any action on the Dunbar, on the building of the Dunbar school, no.

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[R. IV. 392-401, Vol. 2] Q. Mrs. Williamson, you have referred to three specific examples where the NAACP and the Community of Dayton made protest to the Board of Education on matters that they felt were improper; is that right?

A. That's right.

Q. And the first one that you indicated was a practice of using the two swimming pools at Roosevelt High School, one for blacks and one for whites?

A. Right.

Q. And upon your protest of that the Board changed that; didn't they?

A. That's true.

Q. And that all occurred better than 30 years ago?

A. Oh, yes.

Q. And the second thing that you have mentioned historically was the Shawen Acres situation, and as I understand it from the history that I have acquired in this case, that was a situation where the Orphans Home moved from a location that was near Garfield School to a location on North Main Street, the present Shawen Acres, isn't that right, and then the students continued – the black students continued to come to the school that they had gone to at the old location?

A. I don't think that's quite accurate. There was a building there, but that had nothing to do with the Board of Education moving those children from Shawen Acres way up there on Main Street over to West Dayton and Dunbar and Garfield School, I don't think those things connect at all, Mr. Greer.

Q. Again whenever you protested that situation, whatever the implications of it, the Board changed the practice?

A. They eliminated it.

Q. They eliminated it?

A. Yes.

Q. That again was 30 or more years ago?

A. No.

Q. When was it, early 1950's or late 1940's?

A. It wasn't 30 years ago, because Mayor McGee was our attorney for that case, and he hasn't been in Dayton 30 years, that's why I know it wasn't 30 years.

Q. There wasn't any case in the sense of going to court over that?

A. No, we didn't have to. We appeared before the Board objecting to it.

Q. Then the Board changed the practice?

A. This is true.

Q. Now, the third thing that you have mentioned was the

locating of the new Dunbar High School in 1962, and there you objected to the site chosen for the school?

A. Yes, we did.

Q. And as that school was built and as it exists now, it's on a rather large and what is now beautiful site; isn't it?

A. Yes, but it wasn't then.

Q. Are you aware that Belmont High School over on the other side of town was built on what used to be a garbage dump?

A. No, I didn't know that, no.

Q. And part of the building of the Dunbar High School in 1972 involved renovating and improving the land so that there was in essence a park around the school; isnt' that so?

A. That may be true, what you are saying, but we were concerned with having another racially identifiable school. Being in that area we knew following the patterns of the Board of Education, what they had done to us before, it would be an all black school, and that's exactly what it turned out to be, all black.

And then a lot of housing developments came in there later and it all became more and more segregated because Dunbar High School was there.

Q. But the students in that area were essentially black and, therefore, the population of the school was black; isn't that right?

A. Yes.

Q. Now, as far as your objections that the NAACP made to the selection of that site, let me refer you to Defendants' Exhibit N, which is a copy of meetings – of a regular meeting of the Board of Education on December 10 of 1959, and ask you to review that, if you will, for me.

A. I will have to have my glasses.

Q. All right.

A. And I think I know what this is going to say.

Thank you. Yes.

Q. Do you recall appearing before the School Board on

that date on behalf of the NAACP and withdrawing the formal objections that had been made to the selection of the site?

A. I'm sure that I did.

Q. As far as the swimming pools at Roosevelt and the Shawen Acres children are concerned, none of those practices existed in 1972 in the Dayton School System; did they?

A. No.

Q. And as I understand it, when you went to school in Dayton, you attended Roosevelt High School?

A. Yes.

Q. And at that time Roosevelt High School was predominantly a white high school; wasn't it?

A. Yes.

Q. And you lived in close proximity to the school and, therefore, attended?

A. On Norwood Avenue, yes.

Q. As I understand it, ever since sometime in the 1940's you have held your present position as executive secretary of the NAACP?

A. Yes.

Q. And you have given continuous service in that position from the 1940's right up to today?

A. That's right.

Q. And, of course, as executive secretary of the NAACP, you have considered this lawsuit as your case, in essence; haven't you?

A. More or less, yes.

Q. And you personally have been involved in this litigation in all of its stages in the last five years; isn't that right?

A. This is the first time I have ever testified.

Q. But as far as being involved in the suit –

A. I have observed, yes.

Q. All right. Now, as far as Roosevelt is concerned, the school that you attended in 1929, as the years pasesd from 1929 up to the present, the racial mix in the neighborhood surround-

ing Roosevelt changed until that school became predominantly black; isn't that so?

A. Right, right.

Q. And in the area – in the City of Dayton School District, am I not also correct that from early 1950's up until the present year the percentage of black population has increased from something like 19 percent to 54 percent?

A. Yes.

Q. And am I not also correct that as that population increased the schools in the areas where that population was increasing got blacker and blacker in their student composition?

A. Yes.

Q. And would you not agree that this change in those schools was simply a reflection of the changing population of those neighborhoods?

A. Not in the instant of Dunbar High School's, because there were no houses there then, very few.

Q. But as houses were built there, this was again a reflection of the people who lived there?

A. The school was there and the people went where the school was.

Q. And you can recall that I took your deposition in this case just last week?

A. Yes.

Q. And do you recall this question and answer being asked, and this was at page 16 of the transcript:

"Question: Are you aware of any changes that the Board of Education made in boundary lines that caused this to happen, the schools getting blacker and blacker, or was this simply a reflection of the changing population in the neighborhoods?"

And you answered me, did you not: "It could have been the last, changing of the neighborhoods?"

A. It could, yes.

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Q. Mrs. Williamson, just a few questions. First, I would like to ask you if the segregative policies and practices of the school board which you have testified to has had any effect on the segregated housing patterns that you have mentioned?

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A. Will you state your question again, please?

Q. If the segregative policies of the Board of Education had an effect on the racial composition of the neighborhoods or housing patterns?

A. I think it did, yes, yes.

Q. Also I would like to ask if the Board protested generally the segregation of pupils and teachers throughout the system?

A. Say that again.

Q. I'm sorry. Did the NAACP protest generally the segregation of pupils and faculty throughout the system?

A. Assignment?

Q. Yes.

A. Yes, we did.

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Q. Did the practices exist up until the time of the filing of this lawsuit?

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A. Yes.

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Q. Can you recall on your deposition last week, Mrs. Williamson, my asking you, after we had covered the information that you provided me on that deposition, the following question, and the question is as follows:

"And while I don't mean to belittle the importance of those things, because they are important things," referring to historical things you told me about, "none of those practices existed in 1972 in the Dayton School System; did they?"

And didn't you answer me: "No, they did not."

A. As far as the swimming pools are concerned and Shawen

Acres, no, they did not exist. But the pattern of segregation was still there, we still had the all-black schools, Mr. Greer.

Q. Right. And no one will argue with you there, there was racial isolation in the school system, there was some schools that were predominantly black and some that were predominantly white; isn't that correct?

A. Yes.

Q. This next question may sound silly, but we have to make a record.

I am correct, am I not, that both you and Mr. Rice that testified before you are black?

A. I think so.

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F. TESTIMONY OF LEO A. LUCAS.

[R. IV. 408, Vol. 3] Q. State your full name and occupation, please.

A. Leo A. Lucas, an executive administrator in a small business investment company. My occupation is a public accountant.

Q. Mr. Lucas, you hold a position with the Board of Education?

A. I do.

Q. And what is that position?

A. Member of the Board of Education.

Q. And how long have you been a member?

A. Since January, 1966.

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[R. IV. 411-419, Vol. 3] Any child anywhere in the school district may go to the school according to the Board records.

In reality, only black students attended the school. The school was established with the, in my judgment, the intent —

MR. GREER: I will have to object at this point, your Honor.

THE COURT: Well, Mr. Greer, I recognize that this is a subjective view, bipartisan, but I'm still interested in hearing it. I'm going to overrule your objection.

THE WITNESS: The school was established at the very first time in the school district history, the name of the building was selected and given to a black, named Paul Lawrence Dunbar. A black principal was hired, a black staff was hired, and the implementation of the establishment of the school was to accommodate the intent and purposes of the School Board of congregating black children in a central place where they could be taught by black staff people, and that was done at that time.

No other place in the school, in the school district history prior to that time had any such a policy, any such activity took place.

MR. LUCAS: Yes, sir. The second one opened in 1962.

THE COURT: I see, all right. So, in this frame of reference, this is the school that was established, I believe, in the early 1930's?

MR. LUCAS: That's correct.

THE COURT: All right. Then I'm not sure of your objection, Mr. Greer.

MR. GREER: My objection is that it's irrelevant on a time basis.

THE COURT: It may be, but I'm interested in hearing from Mr. Lucas. Objection overruled.

MR. GREER: All right.

THE WITNESS: What is the question again?

BY MR. LUCAS:

Q. Are you familiar, sir, with the establishment of Dunbar High School?

A. Yes, I am.

Q. Can you tell the Court what information you have about the establishment of the school?

A. Yes, sir. The information is that the school was originally established in the early '30's, and the School Board records

indicated that the principal of the school was authorized to hire black staff, and the school was – was told to be a school of open enrollment.

Prior to that, there were not schools, only classrooms for individuals assigned to black teachers.

Now, after the school had been established and the principal of the school attempted to utilize that school as a vehicle to do the job, the School Board – the School Board wanted done, that was continually perpetuated, and it remained so until it outgrew its facilities, and a decision was made to go to a newer facility.

THE COURT: Of what date, Mr. Lucas, was that outgoing of facilities?

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THE WITNESS: It was in the early '60's, about 1961, and then it was open in '62, the new building.

THE COURT: I see.

THE WITNESS: And that was a date – both of these buildings had discussions on problems with the black community.

THE COURT: Incidentally, before you proceed, who was Paul Lawrence Dunbar?

THE WITNESS: Paul Lawrence Dunbar happened to have been a black man who lived in this community and was excelling in literary skills. Paul Lawrence Dunbar was refused admission to a literary guild that was all non-black, but today none of those people who were members of that entity are a member. Paul Lawrence Dunbar is.

Paul Lawrence Dunbar wrote in dialect and in highly skillful English. Paul Lawrence Dunbar has an inscription on the Montgomery County Library here in Dayton, Ohio. Paul Lawrence Dunbar has the home of his birthplace on South Summit Street where he was born. It is now a state facility.

THE COURT: Was he alive at this time?

THE WITNESS: He was not alive, but his mother was.

THE COURT: I see.

THE WITNESS: And his mother participated in the activities and the naming and the unveiling of this institution.

THE COURT: This was intended, I gather, to honor a local citizen; is that right?

THE WITNESS: A national-international citizen. Paul Lawrence Dunbar was acclaimed not only in the United States but also in London and elsewhere in the world, and even prior to the turn of the century and subsequently thereafter he did these things and he died as a young man.

THE COURT: I assume you consider the naming of this school after Mr. Dunbar highly appropriate?

THE WITNESS: No. I'm saying it was a telegraph to this community that the School Board intended to continually practice the institutionalized racism that they had a charge to do as that segment of the entity, governmental entity in this community to make sure that it was understood that although it said open enrollment it was –

THE COURT: I think, Mr. Lucas, you missed my question or I didn't ask it properly or the third possibility is that my impression is totally incorrect. You do not consider that the use of Mr. Dunbar's name was intended to honor a man of esteem in this community?

THE WITNESS: Judge, Your Honor, I want you to understand where I'm coming from. I'm looking at it from what we call in the black community an eagle's eye view and not a bug's eye view. You are looking at it as it was generally conceived by the people who were in the decision-making processes to honor someone. The School Board didn't give that much of a "buzz, buzz" for these people they wanted to telegraph the message.

THE COURT: I see. So it would be your impression that this was not done for purposes of honoring Mr. Dunbar?

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THE COURT: It's your opinion that that was not the purpose?

THE WITNESS: That was not the purpose.

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Q. Mr. Lucas, as a teacher were you aware of the policy of the Dayton Board of Education that black teachers until 1951 were not to teach white children?

A. Yes.

Q. Mr. Lucas, you mentioned the opening of the new Dunbar. That was shortly before you went on the Board; is that correct?

A. That is correct.

Q. Are you aware of any protest in the black community to the opening of that school insofar as two factors; number one, the racial consequences and, number two, a separate protest with respect to physical surroundings?

A. As a member of the NAACP at that time I participated in the protest.

Q. And was the protest on both of those points or one of those points?

A. The beginning of the protest was on both points and subsequently it was not.

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THE WITNESS: Yes, not on both, not on both of them, not inclusive.

BY MR. LUCAS:

Q. With respect to the racial consequences of the location of the school in that particular place, what was your understanding of the response of the Board to that issue?

A. I don't fully understand that. Now, will you repeat it?

Q. Now, with respect to the protest you said it was twofold, number one, to the racial consequences of locating the school where they built or proposed to build and as to that point what was the response of the Board of Education? Was that a matter that could be negotiated?

A. We informed the NAACP and the other – which was a spokes entity for the black community with other entities,

and we said that is not really negotiable, but subsequently we did go into some other avenues that caused the school to be the quality of school that it was alleged to have been.

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Q. Mr. Lucas, did the Board agree to discuss changing the location of the school in order to avoid a segregated enrollment, or did they decline?

A. They declined that.

Q. All right. Did they agree to discuss the physical plans and improvements in the proposal for that plan?

A. They did agree to discuss and collaborate with the community on that.

• • •

[R. IV. 427-428, Vol. 3] Q. Did the actions – strike actions – did the administrators act in reaction to the perceived community pressures in terms of avoiding disturbance of particular white areas?

A. It was a continuous thing. Being a black person sees this, in my judgment, from a different point of view. We see it as a – as the decision-makers, the system, as we sometimes term it, ruling and making decisions continuously against, and telegraphing that same message to the white constituency that we are going to make sure that you are not hurt, and that's the kind of perpetuations that's been going on. That's what it is, the intent, and it was deliberate on the part of the Board to do that.

Q. Now, you have been a member of the Board since 1966. Have you experienced this process that you have just described? Is it something you have personally observed as a Board member and as Board president?

A. As a Board – as a senior Board member currently, from the time I have first set foot, sat in one of those seats, I have experienced the same undercurrent of pressure from the members of the Board.

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[R. IV. 434-438, Vol. 4] Q. Mr. Lucas, I direct your attention to Plaintiffs' Exhibit 11-A, which is the determination of March 17, 1969 from the Department of Health, Education and Welfare with respect to several issues in this system. Directing your attention in particular to the second paragraph, the HEW determination was that the district pursues a policy of racially motivated assignment of teachers and other professional staff. Mr. Lucas, from your experience as a teacher, your experience as a parent and as a Board member, did you agree with the determination of HEW in that regard?

A. I do.

MR. GREER: Objection.

THE COURT: Overruled.

Q. Can I have your answer?

A. I do agree.

Q. What effect, if any, Mr. Lucas, does the policy of deliberate faculty segregation have on the identification of the overall policies of the Dayton Board of Education?

• • •

A. The effect is the manifestation of the intent of the Board through the so-called white faculty in notifying the public and the et al that it's a white school. It's a pretentious manner of sending the message of the policy through the community to the school and black folks perceive that it being that.

Q. Does the effect of the faculty assignment policy reach areas other than the faculty itself, or does it affect other areas of school policy, such as pupils, school construction and so forth?

A. It's a spill-over. It's a continuous spill-over from the assignment of the faculty into the other facets of school operation, construction, pupil assignment and even the distribution of equipment, supplies and what not.

Q. Does the adoption of a plan to reassign or desegregate the faculty and its implementation over a two-year period —

does that change eliminate the effects of the past policy of deliberate racial assignment of faculty?

A. The first part of that I didn't fully get. I would like for the reporter to read that, or either you, or something, so I can be sure I understand what you are saying.

Q. Okay. In 1969 you received the HEW determination and thereafter the Board entered into an agreement to reassign faculty in a more desegregative manner over a two year period. Do you recall that?

A. Yes.

Q. All right. My question to you is having completed that process, with whatever degree of perfection it was completed, does that action eliminate the effect on schools in general of the existence of that practice for a long number of years?

A. That practice in itself does not eliminate the total problem, particularly for a — if it were designed and continuously dealt with for a long period of time it would eliminate, but it does not in the manner in which we did do it.

THE COURT: Mr. Lucas, Witness Lucas, there is a message to the black community to be obtained from a policy of requiring black students to be taught by black teachers. Why isn't it also a message to the black community when the School Board says we will now have white teachers teaching black students and black teachers teaching white students? Why is one conveyed and the other not conveyed?

THE WITNESS: See, the manner in which the message is being sent to the black community in the example you just gave also triggers the black community that there is something that does not meet the eye, and we do not perceive this to be in concert with continuous pronouncements, comments, and statements that are made by the decision-makers.

THE COURT: Is it fair for me to say there is a selective receipt of these messages?

THE WITNESS: I don't know whether it would be selective. I would say it would be fair to say a cautious receipt, just like I said yesterday.

THE COURT: You may proceed, Mr. Lucas.

Q. Mr. Lucas, the Judge's question suggests to me, assuming that a different message is sent by desegregating as opposed to segregating the faculty, let's assume that as of this morning, the Board has sent a different message, we are now going to desegregate the faculty.

A. Yes.

Q. My question is, does that action as of that date eliminate the effect of 50 or a hundred years of having given a different message? Does it eliminate it all in one year?

A. It is impossible to us.

Q. Mr. Lucas, are you familiar with the reassignment of Westwood seventh graders to Roth and Roosevelt in the earlier 1960's?

A. Yes.

Q. What was done that I believe Westwood at that time had become a black school, is that correct?

A. That is correct.

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[R. IV. 447-448, Vol. 4] Q. On the subject of the resolutions that you've just been discussing, Mr. Lucas, am I not correct that in January of 1971, the beginning of the year when these resolutions were adopted, the Board unanimously enacted a resolution in which it stated that it saw no alternative to the neighborhood school?

A. I don't recall that particular incident.

• • •

Q. This was a unanimously adopted resolution of the Board of Education on January 4, 1971; was it not?

A. According to this, yes.

• • •

Q. One of the Board members and indeed all of the Board members voted in favor of that resolution; did they not?

A. That is correct.

Q. And you were one of the Board members who voted in favor of it?

A. That is correct.

Q. You were the president of the School Board at that time; were you not?

A. That is correct.

Q. Do you recall on the same day that that resolution was adopted, the Board also unanimously adopted a resolution endorsing the concept of scattered site housing and urging all governmental and quasi-governmental bodies to adopt that kind of a principle?

A. I don't have that before me. I don't know.

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[R. IV. 454-463, Vol. 4] THE COURT: Now, I want to make sure I'm not misunderstanding you, Mr. Lucas. This is extremely important.

You are saying that in January, on January 4, 1971, this resolution was intended for public consumption for a forthcoming levy?

THE WITNESS: Yes.

THE COURT: And did not represent your views, you are not in agreement of an alternative to neighborhood schools. Is that right?

THE WITNESS: No. See, this has no alternative, we see no alternative. We did not say that subsequently we would. We said we saw it at that time, that there were no alternatives, and I can remember, after having seen this, that this is what we intended to go with. We did not absolutely state it, that there shall be no alternative and we shall keep — we said we see none now.

THE COURT: Whatever this document says, I simply want to understand now really what you are testifying to.

THE WITNESS: Yes.

THE COURT: Because if I understand it, you are saying that you signed this —

THE WITNESS: Yes.

THE COURT: For purposes of passing a tax levy at some point and not because you believed in it; is that right?

THE WITNESS: That – See, my belief at that particular point is not what you are saying, not the manner in which you are saying it. If you will recognize the events that took place from January '71 until August of '71, my belief about, say, a concept of neighborhood schools was not really solidified until these events finally came in, but all of us at that time agreed that we saw no other alternative, and we publicized that on a unanimous basis.

You must remember now, I have one vote, and I had one other purpose in mind, not this purpose. I had the purpose in mind of ultimately equalizing the educational opportunities for children. That's the only purpose that I have ever had, and whatever I did do was with that in mind, and you go along to get along.

THE COURT: Mr. Lucas, I've spent more than a few years of my life in the world of politics and I understand the policital reasoning and the political expedience, probably equally as well as you.

THE WITNESS: Thank you.

THE COURT: But I simply want to have my own understanding of what this resolution meant to you.

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Q. At any rate, Mr. Lucas, as I understand what you have testified to, your views on the subject represented in the January 4 resolution changed as the months passed by after January 4 of 1971?

A. Yes.

Q. And that on January 4 when that resolution was adopted, that you voted before as President, it was your feeling that there was no feasible alternative to neighborhood schools?

A. That is correct.

Q. And as for alternatives in the Dayton system, the only alternatives really were either to somehow get the money to

build some giant central location where all the students would come, or to bus students all over the city to mix the races; is that right?

A. That is basically correct.

Q. And as I got it, as the months went by after January 4 of 1971, your views changed as to those alternatives being feasible?

A. Yes, brought to our attention.

Q. All right. And, of course, it was the same constituents on the School Board on December 8, 1971 as had been there on January 4 of 1971?

A. That is correct.

Q. Although an election had intervened, and as you indicated, it was clear when January of '72 came around, the voting construction of the Board would change appreciably?

A. That is correct.

Q. Prior to the adoption of the December 8, 1971 resolutions, the advice of Louis Lucas as counsel for the plaintiffs in this case was sought and obtained with respect to those resolutions, wasn't it?

A. That is not – I don't believe that I – we had advice, not pertaining to the resolutions, but we had advice of Louis Lucas, but that advice was not to me, it was to the superintendent.

Q. You recall that I took your deposition last week in preparation for this hearing, don't you?

A. Yes, I do.

Q. Do you recall my asking you at page 89, "Am I not correct that prior to the adoption of the resolutions which were later rescinded, the advice of Louis Lucas, the counsel for the plaintiff in this case, was sought and obtained with respect to those resolutions," and you answered me, "I believe that was done. It must have been done with Superintendent Carle and Foster, I think the next time. I don't know the details about the legality of that or the details."

Is that accurate?

A. Yes, yes. There was a – my answer there in my judgment tells you clearly that I had, but what you were asking me confused me with some other events. The event was that Lou Lucas came to town and I didn't even know it. I communicated with my attorney, Mr. Austin, at the time, and he indicated to me that Louis was in town, had some knowledge about what we were doing, and then I asked if it were possible for him to come and talk to our superintendent, and he found out and said yes, that's – we saw to it that he saw our superintendent, but Foster was not even in the picture, to my knowledge, at that particular time.

Q. All right. And I take it the Mr. Austin to whom you refer is the Mr. Austin who is seated here at counsel table with Mr. Lucas today?

A. That is correct.

Q. I gather that you don't recall personally talking with Louis Lucas prior to the adoption of these resolutions?

A. No, other than the fact that I was asking him what he – asking through Austin that he talk with our people, but those were not talks about the resolutions to talk about preparation of the resolutions, they were already prepared at that time. We had had those prepared, and the superintendent was in turn consulting with his staff, consulting with other State Department people and so forth, and that's where the information was sought.

Q. What was the purpose of the discussion if not about the resolutions when they were to be presented a few days later?

A. The plan of – it was about – when you say about the resolutions, my interpretation is that they were discussing the whole problem of hours, doing something about the unitization of schools and school activities for children. That's what they were discussing, but with themselves and not with us as administrative people because they had to implement it, and they needed to know what we were going to do.

Q. Well, in fact, you and Dr. Carle had discussed before the resolutions were adopted the possibility of bringing

a desegregation suit if the resolutions were rescinded after they went into force; hadn't you?

A. You know, I don't recall whether that was it because as a Board member I was not planning to bring any suit. We had done what we intended to do and that was to do what was our authority and moral responsibility, to see to it that the segregated system no longer existed and that we go into the unitary system, and we did that. That was what we were doing. We had given it to the superintendent, asking of him to do whatever he deemed necessary, talk with whomever he wanted to, use the State Department of Education assistance and what not to see to it that it was done.

The people who came in to see him were people who were giving him expertise on various sections of it.

Q. Do you recall my asking you in my office last week this question? This is page 90 of the deposition.

"Before the resolutions were adopted did you have any discussions with Dr. Carle as to the possibility of desegregation litigation if the resolutions were rescinded or if they were enforced?"

Answer: "We had that. That was a foregone problem as long as way back in June or April, whenever the deadline for filing the petitions for candidates for the School Board. That was apparently going on, and we had a pretty good comprehension about the time table of that kind of action. They fit it right into the notch just like it's being done, just like right now, the same thing."

Do you recall that testimony?

A. I do.

Q. And do you recall my asking you: "So that way back in June when the petitions for the November election were filed, there was a time table that in the event that the complexion of the Board changed, this litigation would ensue?"

And you answered me "Yes"; didn't you?

A. I did. I did. And let me explain why I answered you yes, if you would. Because this same process had gone on

in other cities. We had anticipated that we who had passed those resolutions were going to be brought into litigation and brought in to the public for removal from office. We thought we were going to be the object of a repeal or whatever the word is –

THE COURT: Recall.

A. Recall, the object of a recall, and we expected that. We were anticipating that. That's what we thought was going to happen to us, and that's what I was really dealing with.

Q. I do have some information – let me ask it to you in the form of a question to see if this refreshes your recollection on these bond issues. Am I not correct that we had the joint exhibit in October of 1970 that we reviewed earlier? In November of 1970, the election on the bond issue was held and the bond issue was defeated; isn't that right?

A. That is correct.

Q. And as of January 1st, 1970, no bond issue was pending; was it?

A. Yes, there was a defeat in '70. We had to do something about renewing it for '71.

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[R. IV. 466-469, Vol. 4] MR. LUCAS: November '71. And that both of those or one of those had been presented earlier and had been defeated and brought back up.

THE COURT: All right.

MR. LUCAS: I think we ought to try to get something accurate.

THE COURT: I would like to know what occurred between those two periods of time. You may proceed.

BY MR. GREER:

Q. All right. Let's go to some of the other items that you have discussed with the Court yesterday and this morning, Mr. Lucas. First, as far as Dunbar High School is concerned, it is true, is it not, that that high school had an

attendance zone that was optional for anyone throughout the city way back in 1932 when it was opened?

A. That is true.

Q. And as I understand it, when the principal was hired there he was given discretion to hire whatever faculty he wanted; is that your understanding of it as well?

A. That is correct.

Q. And am I not also correct that when the new Dunbar High School opened in 1962 it was not a 100 percent black student school, or do you remember?

A. I was of the opinion that it was, that it could have been that there was – there was one interracial family in the neighborhood where they had white and black children in that family, and I don't recall whether they attended there or not.

Q. All right. According to the statistics that we have, the initial year's class was 92.7 percent black. I think some 153 students or so were white students in that school. Is that your recollection, or do you have a recollection?

A. I will assume that that might have been correct.

Q. All right. Now, you have testified this morning that as of January of 1971 you felt there was no feasible alternative to the neighborhood school system. You were questioned yesterday about the boundary changes that occurred with respect to some schools on the west side of Dayton way back 20 years before that in 1951. As a result of those boundary changes there was a racial mix in a larger number of schools in that area; isn't that true, or do you know?

A. There was a – when those school boundaries were changed there was a racial mix on a two-way arrangement. When the fringes of the boundary for a given school were to be changed then – and particularly if black children were in those schools, the overflow on the fringes of the boundary generally met with optional zones that the blacks would go to the black school and the whites will go to the white school.

Q. But let's look at the alternatives back there in 1951, 20 years before you began to feel there might be some alterna-

tive to neighborhood schools. The alternatives you had were, No. 1, to keep the boundaries exactly the same, which would have held Willard, Garfield and Wogaman as a black island, wouldn't it, because that's where the black people lived?

A. Well, a black island because those were the schools designated for them.

Q. Right. And the other alternatives were to change boundaries so that more black children would have an opportunity to attend classes with white students, which is the alternative the Board used, or a third alternative would have been to, I suppose, redo the whole district and adopt some system-wide plan of busing or moving children around to create some kind of racial balance in all the schools in the system; isn't that right?

A. That might have been one of the – that could be right.

Q. And the only other alternative that I can think of would be to abandon all the schools in the system and build a downtown campus and move all the children there.

A. That could have been an alternative too.

Q. So there are four alternatives and of the four the only one that was – the only two that would really have been considered feasible at the time were either leaving the boundaries as they were or taking the alternative that the Board chose, wouldn't you agree, in view of what you have already told us this morning, about your own feelings as of January of '71?

A. You almost had to take that position because that's what the Board was there to do.

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[R. IV. 471-478, Vol. 4] Q. All right. Well, let me ask you this: On your deposition last week do you recall these questions?

"If you had a school that had all black children and all white staff you would still call that a black school; wouldn't

you?" This is page 48. And your answer was, "Yes"; wasn't it?

A. Yes.

Q. "And likewise if you had a school with all white children and all black staff you would call that a white school?"

A. Yes.

Q. The perception there being based on the predominant race of the students attending the school; isn't that fair to say?

A. Yes.

Q. And then do you recall my asking you: "It's been your observation that a tipping point does occur between 45 and 50 percent of the student composition?"

A. Yes.

Q. And that has been your observation?

A. And that's still my observation.

Q. Let's then turn to this generalized question of perceptions. You've talked to us about a bug's-eye view and an eagle's-eye view of these things and, of course, none of us can help seeing anying in the world except through our own glasses and perspectives. You would agree with me, would you not, that the only alternatives from any perception to neighborhood school systems for a city like Dayton would be a system-wide situation of moving children from one end of town to the other to achieve some kind of approximate racial balance in all schools or a centralized campus?

A. I would agree with that.

Q. And those are alternatives that certainly neither you nor anybody else ever suggested to the Board as feasible until sometime after November 4th of 1971; isn't that true

A. That is correct.

Q. Now, as far as the intentions of the Board and the actions that they took over the years prior to December 8th of 1971, you don't contend that the Board acted with an intent to segregate students; do you?

A. I do.

Q. You do? I'm sorry. I didn't hear your answer.
A. I do.

• • •

Q. While with the advantage of hindsight it could be argued that the Board's policy of putting schools where students are or where they were expected to be had racial effects, wouldn't you agree that the pursuit of that policy was never intended by a single Board member as something done to separate the races?

• • •

A. It was done to separate the races.

Q. Could I refer you to page 74 of your deposition? Let me ask if you recall my asking you this question which starts at line 8.

"Is there anything with respect to an inter-relationship between general community racial discrimination and School Board acts that you have knowledge of that we haven't covered yet this afternoon?"

And your answering me, "That was the thing that I tried to – when I said the Board made certain decisions that were just automatic, it was never intended by a single Board member to be doing it to separate the races. It was understood that if you're going to make it you had to do it. That's what I'm talking about, the spill-over on the Board. The Roosevelt thing was a good example. If we were to talk – I think that man's name was Rogers, the Board member. He would not have admitted. He wouldn't admit and probably didn't even realize that he was setting up a dual thing, but it was just understood that these are things we do."

A. Yes.

Q. And that testimony was accurate testimony; wasn't it?

A. That was what I said, and any relationship to this, and exactly what I meant, but I meant it not in the manner in which you are asking it of me now. I meant it that they saw to it that the wishes of the majority in all of the decisions or

none of the decisions that were made were made on the – on behalf of that wish to make sure that the races are separated.

Q. If I understand you correctly, and I'm honestly trying to do that, I think what you are doing is making a distinction between unconscious intent and conscious intent, or is that fair to say?

In other words, people acted the way they did simply because that's the way they were made in your view, and it was a bug's eye view or an eagle's eye view or any other eye view, the intent was to make sure that the races were separated?

A. They were.

Q. But as far as conscious intent, as you told me, then you don't claim that any board member ever consciously intended to be taking any action for the purpose of separating the races as opposed to placing schools where the kids are, that kind of thing, do you?

A. Only to the extent that consciously recognizing that the results, the perpetuation of institutionalized races.

Q. You yourself as you testified to the Court this morning –

A. Yes.

Q. – didn't come to a conscious realization that any of the possible alternatives to what the Board had been doing were feasible until sometime in 1971?

A. Until we got these studies, until we got the votes.

Q. And I think you – it's true, isn't it, that there was a man who served something like 12 years as President of the School Board whom you knew well when you went on to the School Board in 1966, and you are sure in your own mind that he never realized there were any racial implications of any kind in the decisions or non-decisions that he made; true?

A. That is true.

Q. And if you could refer with me to page 75 and 76 of your deposition, do you recall these questions and answers being given by you last week?

"Question: Would I be correct in paraphrasing what you

are expressing to me that you feel that a lot if not all of the decisions of the School Board in the areas that are under scrutiny in this case were the kind of things the School Board members did, not because they had any malicious intent to do something wrong or to do some harm to black people or treat them as inferior people, but something that they simply did because they were white people and didn't perceive what they were doing the same way the black community did," and your answer was identical, the same thing?

A. Yes.

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G. TESTIMONY OF JOHN W. HAREWOOD.

[R. IV. 492-496, Vol. 4] Q. State your name and address, please.

A. John W. Harewood, 1449 Rosehill Drive, Dayton, Ohio.

Q. How long have you lived in Dayton, Mr. Harewood?

A. Since 1938. That's almost 40 years.

Q. And how long were you employed by the school system?

A. Thirty-six years.

Q. And when did you leave the system?

A. September 1974.

Q. And you retired at that time?

A. Yes.

Q. And what position did you hold at that time?

A. At the time of retirement I was assistant superintendent in charge of administration.

Q. Did you teach at Dunbar High School?

A. Yes.

Q. And by that I mean old Dunbar.

A. Yes.

Q. What year were you there?

A. 1938 to 1954.

Q. And what was the racial composition of Dunbar during that period?

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A. Black.

Q. That applied to both students and faculty?

A. Yes.

Q. Did one of your assignments at Dunbar include the responsibility for counseling?

A. Yes.

Q. All right. As counselor were you assigned to visit elementary schools?

• • •

A. Yes.

Q. As part of your responsibility in that regard were you assigned to visit the black feeder schools for Dunbar?

A. Yes.

Q. And what schools were those?

A. Willard, Wogaman, Garfield.

THE COURT: Can you identify this in point of time, please?

A. It was the years 1949 to 1954. I was counselor five years, during that period of time. I haven't named all the schools, but the schools in the general area.

Q. You were sent to the schools on the west side of town; is that correct?

A. Yes.

Q. Those were the schools you were sent to; is that correct?

A. Yes, yes.

Q. During that period of time did you have an opportunity to counsel white students to go to Dunbar?

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A. Not the first year of my counseling.

THE COURT: I didn't understand the answer.

THE WITNESS: Not the first year.

THE COURT: Not the first year?

THE WITNESS: Yes.

Q. Were there other counselors at Dunbar besides yourself?

A. One other.

Q. Were either of you assigned to go to other parts of the city to solicit students? I take it that's one of the things counselors do for schools?

A. No. Our assignment was generally to talk to eighth grade students about high school, the variety of courses which are available, how they fill out election blanks, and counsel them generally on the value of a high school education. That was supposed to be a system-wide responsibility all of us had. And incidentally, the last — at the end of our presentation we would say what was unique about Dunbar, and it was unique, that would make them want to go to Dunbar.

Q. Now, my question basically is: Were you assigned to do that at the East Side schools?

A. No.

Q. With reference to the Miami-Chapel School, were you contacted by the Central Office Administration with respect to the location of that school?

A. Yes.

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[R. IV. 501-533, Vol. 4] Q. And you objected to the racial consequences, and I believe you used the term economic isolation?

A. Yes, that's part of it when I talk about the cultural aspects, raising the level of sights of young people who attend the school. That's economic isolation, yes, sir.

Q. Turning now to the Jefferson Primary School, can you give us a date?

A. Jefferson Primary, 1960 discussion was thereabouts.

Q. And were you in the central office at that time?

A. 1960? Let's see. No.

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THE COURT: Your point about the people in housing projects is a valid one and an impressive one. This would be true of all persons, wouldn't it, white, black, Appalachian? It wouldn't matter if they were in housing projects by definition.

THE WITNESS: Yes.

THE COURT: They were unable to compete in the system?

THE WITNESS: That's right.

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Q. Your Honor's question suggested an additional question to me. Did you object to the additional factor of the racial segregation as making whatever problems that might arise from the housing project situation worse?

A. Yes, that's an added factor to the economic isolation. That's one extra hurdle over which we ask our children to get over in order to compete in our society.

Q. All right. At the time of the Jefferson Primary were you contacted also with respect to that construction?

A. Yes.

Q. And did you have a view as to whether or not that construction should be made in that location?

A. Yes, I did, and may I indicate — and this comes from building schools where children are, which I opposed educationally, morally and from every other sense, and I think the administration in the School Board who follows that are in trouble, and we are in trouble now because of that type of shortsighted policy. There were three sites, one on Faulkner Avenue, in which there is now a park. The other site was the Jefferson Elementary site. The third one is the Princeton Park site, a lot farther north.

My objection to that and to all other types of construction of schools — and permit me, your Honor, just a minute to indicate this, and this speaks specifically to the problem we're trying to resolve now. Elementary schools ideally, and check your suburbs and your affluent neighborhoods where we have schools, in order to be effective, in order to allow the teachers

and the children to inspire in them a love of learning, teach them respect of others, to teach them respect for authority and so forth, they must be small, 400 to 600 pupils, and we have ignored that specifically on the west side of town.

Now, I will answer your question. We had some complexes where there were 1400 children. When I was the principal of a school we had 1300 children. This is why I am so vividly opposed to building schools where children are. This is the same problem that's facing us here when we discuss this.

THE COURT: Excuse me. Mr. Harewood, wait a minute. I'm following you, and I recognize what you're saying. But the smaller the school the more you would have to build; wouldn't you?

THE WITNESS: Perhaps.

THE COURT: Well, its mathematically demonstrable. If you feel that 1300 or 1400 are too much in one school then you must build two schools.

THE WITNESS: And that's what I'm saying, Judge.

THE COURT: So that my question is: The smaller the school the more you must build?

THE WITNESS: Yes, and may I –

THE COURT: But you would not build them where the children are?

THE WITNESS: No.

THE COURT: Okay.

THE WITNESS: May I respond further to that, Judge?

THE COURT: Please do.

THE WITNESS: We are faced now with making decisions on the basis of cost, and I ask you when the figures came up about drop-outs and suspensions and so forth, which cost is greater and whether building schools and making them effective educationally and so forth so that we can really teach the children or run them through educationally – what do they call it, illiterate. We are graduating people who are functionally illiterate because of this saving of money and

putting a lot of money in schools and so forth. I'm asking you now, is the cost –

THE COURT: Mr. Harewood, one of the things that I have resisted with all the power at my commend the past five years is taking over and operating the Dayton School System. That's the very last thing I'm going to do, and I would concede and agree with you completely there are many, many things wrong with what it is we've been doing with education, but that is not, thank heaven, a judicial problem yet.

THE WITNESS: I have been in the system all these years and have tried the best I can to articulate this so people who have the power to do something about it would do something about it.

THE COURT: You may proceed.

A. Yes. Now, then in reference to that those were some of the reasons I objected to it, because of the fact that building a black school in Faulkner would just be an extra – another black school in another black territory, another movement of a segregated section of town for blacks and black schools. I objected to putting it on the Jefferson Elementary site because then the school is too large to begin with, and you would have two schools and a large number of children coming there. There is no way for the principals and people involved in that to do the job they wish to with children piled up on top of each other at the particular site.

My recommendation was the Princeton Park site, way up north of that, and I'm not hung up with moving children to get them to a site if there's something that's educationally sound, and my recommendation was there because there was a possibility then for the school system itself to say that we could have integrated education, and we could move and demonstrate how we can best spend our money to educate children.

Q. Did building of the primary unit on top of the other school occasion, did that further impact on the racial concentration in that area?

A. Yes, Mr. Lucas. I know the –

Q. Excuse me. Did you point that out to the staff of the Board?

A. Yes. I know what the trepidation – we go back in this. What I have to say, if I'm permitted to say this, on the west side of town, I wish we had some way to put it around. You have Louise Troy, Miami-Chapel on the same campus. We have Resident Park Primary and Resident Park Elementary on the same campus. We have Jefferson Primary and Jefferson Elementary on the same campus, see, on this side of town only. With a few exceptions, we have this concentration of children on one side, and we put administrators out there and say educate them. We were concerned when they lose respect for everything and everybody there, suddenly they're drop-outs, or become functional illiterates because there's short-sightedness in doing this.

Q. Were you contacted with respect to the location of the new Dunbar High School?

A. I was.

Q. And were you contacted on more than one occasion about that school?

A. Yes.

Q. What were some – let me go back. Did you object to the location of the new Dunbar High School? If you can answer that yes or no, then we will go to another point.

A. Yes, I did.

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Q. I have changed my question, and let me have your answer. What were your objections?

A. My objections?

Q. Yes.

A. That it was placed in the midst of already segregated schools with no possibility of any people attending unless the Board changed its policy but blacks entirely, and that according to the – and, see, I come from a high plane, I have to – I have been a curriculum man in education, and I know what

we have done to children. I know what we have done to the community without using our money wisely and telling them what we need and trying to get it because of the same general – because of the environment there, we still wouldn't have what we were looking for as far as ideal selection spots for a school.

Now, I can remember what your question was. The reasons they said that they were going to build a school there, just listen to it. This is a slum area, one of the worst slum areas. This is a chance for us to get rid –

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Q. Mr. Harewood, in your expanding on your reasons to the Board as to why they should not be able to, what response did you get to your objections?

MR. GREER: I'll object, your Honor.

THE COURT: Sustained.

MR. LUCAS: Your Honor, may I make an offer of proof?

THE COURT: Mr. Lucas, you may make your offer of proof. This is clearly hearsay. I will hear anything that you can establish other than a witness' hearsay on this issue, but this is simply not relevant.

MR. LUCAS: Your Honor, the witness was an official of the Board of Education. He was contacted in his official capacity, and what was done or not done, and the reasons therefor, is absolutely essential to this lawsuit.

THE COURT: It may well be. There is an appropriate way and non-appropriate way to present testimony, Mr. Lucas, and it does not include hearsay nor testimony by counsel. If you want to specify who said it, when, I will allow that in.

Q. Would you tell the Court, Mr. Harewood, who you met with?

A. Mr. Bagwell, assistant superintendent in charge of business affairs.

Q. After you stated your objections, what responses did you get to the objections you had advanced?

THE COURT: Would you identify this in point of time, Mr. Harewood?

THE WITNESS: The construction of this school, this is the new Dunbar, was 1962, so it's probably a year or two preceding that when we had discussed as far as the property is concerned, probably 1960, your Honor.

Q. Would you give the Court the responses to your objections?

A. The reasons for selecting the site, according to the assistant superintendent Bagwell was, first, the land was cheap, they could get a large section of land for a very nominal price. Secondly, that this was a slum area, and the city was – would be happy to eliminate that in this process, and thirdly, that after the construction, there would be an excellent place for black housing around this site.

Q. Did the Board proceed to build a school in that location?

A. Yes.

Q. Mr. Harewood, you have– let me see if I can pinpoint a time with you.

When did you go to Central Office?

A. 1967.

Q. What position did you go to Central Office in?

A. Director of secondary instruction and curriculum.

Q. As a long-time teacher and administrator in the system and as ultimately Central Office staff official, have you reviewed the pattern of school construction in Dayton?

A. Yes.

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Q. And are you familiar with the pattern of faculty assignment?

A. Yes.

Q. In the Dayton System.

From the examination of these factors, can you tell the Court whether or not race was a substantial contributing factor in the decision-making process?

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THE WITNESS: Yes.

BY MR. LUCAS:

Q. Can you explain, please?

A. Could you expand your question just a little bit? In which direction, sir?

Q. Okay, I'm sorry. Was the pattern of school construction segregative or integrative?

A. The pattern of school construction had to be segregative, still following the theme of building schools where the children are.

Q. Did the pattern of school construction tend to concentrate blacks in one particular area of the city?

A. Yes.

Q. And that would be in the west side?

A. West side, bound by a river, the river, railroad, trains, something else.

Q. Does the determination of the site of the school building by the Board of Education affect the so-called neighborhood? Does the Board, by determining the site of a building, determine the neighborhood?

A. Yes.

Q. And locations of primary schools, I believe you have already covered. Does that in turn affect the racial composition of the area of service?

A. Yes.

Q. Does faculty assignment play a role in the identification of schools on a racial basis?

A. Yes, up until 1969, I believe that's when the date is, that time where HEW entered an agreement with them to change that.

Q. And that change took place over a two-year period, is that correct?

A. Yes.

Q. Does the effect of the years that went before that of racial assignment of faculty, is that dissipated by the two-year process of change?

A. Unfortunately, no. It takes a long time to build up. We hope it doesn't take a hundred years for us to get rid of it, but it's going to take longer than just two years for us to.

Q. Does the effects of racial assignment of faculty in the past impact on students and other aspects of the school community?

A. Yes.

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Q. Mr. Harewood, after 1969, 1970, did the assignment of faculty and staff continue to be of desegregative nature, or was it actually completely effectuated?

A. Repeat your question again.

Q. After the HEW action, did the practices of the Board with regard to this particular administrative staff and Central Office staff, did it become a thoroughly desegregated process, or were there elements of discrimination which had not been remedied?

A. Well, realizing that, the fact that the process of retirements, or creating new positions and so forth would mean that it couldn't be done immediately, some of it was done, but the thing which disturbs me, I sense enough, I have indicated that there's been a resegregative approach to the model which would be for all the cities of the administrative staff and their particular responsibilities.

Q. Have there been actions at the Central Office level which have tended to eliminate blacks from positions of policy and authority?

A. Yes, sir. In order for me to make this, can I take a few minutes?

The heart of a school system, the control of the school system, the decision-making portion of the school system, depends upon the people who, first of all, operate the budget, who have the control of the budget, hold the money. Secondly, those who have control of the programs, call that curriculum, which operate in the school. Thirdly, those who have the responsibility of recruiting and appointing, the recruiting and

employing teachers for the school system, and from the teachers, most generally administrators come from that, and a fourth, very important area, is those who have the decisions, as far as making recommendations, according to location of sites, about the need for this research department, those who have all these and all of those areas, didn't hardly have one. The ultimate responsibility is in the hands of whites so in a sense to enter our school system, it's over 30 percent black now, they're the ones who's telling us, saying to us that these things should happen, and to illustrate this further –

Q. Excuse me. When you say are in the hands, do you mean at the present time?

THE COURT: Mr. Harewood, that in and of itself, in your opinion, is segregative?

THE WITNESS: Yes.

THE COURT: That a white cannot ever, no white can ever appropriately administer a school that is half black, is that right?

THE WITNESS: No, no.

MR. LUCAS: Your Honor –

THE COURT: Mr. Lucas, if you will permit me, I will ask the questions that I want answered, and I will request you to refrain from commenting.

MR. LUCAS: Your Honor, I thought you were characterizing what the witness has said.

THE COURT: Mr. Lucas, I was trying to determine whether that's what he said. If you don't mind, I will conduct this hearing as I think it should be conducted.

THE WITNESS: Now, Judge, I was saying the central office staff, which has set the model for all the other schools as far as when we say we are going to desegregate, then it can't be – it has to be up and down the line. I'm not saying that, no. I am saying we should be a part of the decisions made when over 50 percent of us are black, a high level and high point, to be able to indicate all this. Do you follow me now?

THE COURT: No.

THE WITNESS: You don't?

THE COURT: I still don't quite understand what you are saying. I want to ask you once again, are you saying that the mere fact that any part of the staff, whether it's the most sensitive or the least sensitive, is white, makes that an act of segregation?

THE WITNESS: No, not in itself.

THE COURT: Now, you have answered my question.

THE WITNESS: Not of itself.

THE COURT: Now, you may proceed, Mr. Lucas.

BY MR. LUCAS:

Q. Would you continue with your explanation please?

A. Yes. I mentioned the general areas where responsibilities for the work of a school system are. Now, in our system, you have — we have management services, we have responsibility for research and the responsibility for hiring teachers. The Assistant Superintendant in charge of that is white. You have to go way down the line — Oh, yes, we do have one black in that. He's in charge of hiring of custodians, maintenance people, and so forth. That's a very sensitive area.

We have, as far as the school system is concerned, another sensitive area is part of the program and curriculum. What happens, what goes into the schools, what happens to the school, we have one black there, but he has — he's not the assistant superintendent in charge of that. He's down the line. He has a — he is an executive director of secondary education, I think that's the title, and the high school, I want to talk about that a little bit, and the business department, which has a responsibility there, that's also all white as far as decision making. They have some blacks there who are in charge of area custodians. They have a white over them also, and in the area of pupil personnel, Dr. Goff and you know how sensitive the area is, how important that is, that we get the feeling and understanding of the children who attend our schools and try to understand and interpret it and try to work out programs for them. They have one black there.

He is a supervisor-director of special education, so I'm saying to you that in regard to the staff desegregation, it goes all up and down the line. It has been ignored at the highest level and it couldn't follow through on the other levels, and I must add that there have been several opportunities because of retirements and so forth for them to correct this.

I'll list some of them.

Directors of psychological service, the executive director of pupil personnel. He was an assistant superintendent of teaching personnel; assistant superintendent at that time, director of vocational education, the director of physical health and physical education, all those positions have been open, and we still haven't those decision-making spots, whites who are in planning, where we have over 50 percent of the school population, they're the ones who make the final decisions in regard to all of this.

THE COURT: Mr. Harewood, do you feel that black administrators would be more sensitive to the needs of black children than white administrators?

THE WITNESS: I think, your Honor, that we — if we followed that line then we would never get to the place we want to get as far as our society, as far as our schools are concerned. We have said pretty generally that children are children after you get rid of all of this, and they have all the same hopes and aspirations as anyone else.

My answer has to be categorically no. If we have that, then we are in the wrong business. I believe it has to be.

THE COURT: I want to make sure I understand your answer.

THE WITNESS: Yes.

THE COURT: You are saying that black administrators are not more sensitive to the needs of black children than white administrators?

THE WITNESS: No, I wouldn't say that because — because we are black.

THE COURT: I see.

THE WITNESS: And because we have gone through all this, we have to interpret the whites, and that's the reason my concern is that we don't have those on a higher level can interpret and – interpret this and say to them that, you know, this direction is wrong.

THE COURT: Mr. Harewood, I must be asking the wrong questions because you are giving me diametrically opposed answers. My question once again –

THE WITNESS: Yes.

THE COURT: Is it your opinion that black administrators, black principals, black superintendents are more sensitive to the needs of black children than white administrators and white principals?

THE WITNESS: Because of what they have, they're more sensitive.

THE COURT: You may explain your answer. I'm trying to find out, do you agree with that or not? Are they more sensitive to the needs of black children?

THE WITNESS: I'll say yes, if you allow me to say, Judge, also more sensitive to the needs of all children because of what they have been through. That's the reason – that's the reason I have to make strong, the point, they must be in decision-making positions to help us get through this.

THE COURT: You may proceed.

Q. You are not suggesting that all decision-making decisions have to be black, but rather that there needs to be a share in it, is that right?

A. There has to be, there has to be.

Q. I believe you have testified that there have been opportunities, vacancies within the staff of the Central Office in those kinds of positions; is that correct?

A. Yes.

Q. Have there been qualified applicants who were black, qualified people within the system who were black who were not considered?

MR. GREER: I'll object at this point. This is asking for subjective –

THE COURT: Overruled. Again, I'm not ruling on the weight, Mr. Greer. I'm simply saying this is an admissible thing.

THE WITNESS: May I say, this is subjective. I'm talking to the attorney – this is not a subjective thing. Boy, for the last three years I had the responsibility of the performance appraisal of every principal in the school system, and we sat across the table from each other, and I went down their requirements, their recommendations, what their dreams and aspirations were as far as the school was concerned, so I know, not subjective, I know because of the facts which were presented to me, that there were qualified applicants for those positions.

Q. You also are familiar with their professional qualifications, is that correct?

A. Yes, sir.

Q. Was there a trend towards putting black administration in policy – decision-making processes which had been changed in the last several years?

A. I can cite you my own experience, one particular example.

Q. Let me ask you first before we go to the example –

A. Yes.

Q. Was there at some point in time what seemed to be progress towards a balanced staff concept at the Central Office level?

A. Yes, moving towards it. We weren't there, moving towards it.

Q. Was there a change thereafter in faculty, and give us some point in time where that change either became apparent or began?

A. Yes. My – I retired in '74. In '73, there was a new administration. My title was, as indicated, was assistant superintendent in charge of administration, and it had been a

rough struggle to get to the place where a black had decision-making powers in all these areas, and my job description was changed, and the new superintendent has that power to change that, that you don't argue with that, but in the process, replaced in assuming some of the responsibilities that I had, and I pretty generally — the information I received, that that still exists. The elementary principals, there were some 59 or 60 of them for whom I had responsibility as far as the administration of their schools, and they said you are the superintendent representing the schools in this particular area. That was also me. You are supposed to carry on all the policies and so forth.

All the elementary principals were subsequently assigned to the executive director of elementary education for the same function I had, and they reported to the assistant superintendent in charge of curriculum, which is out of my department, and the same thing applied to the high schools.

They were also directly responsible, not to this department, but to an executive director in charge of high school curriculum, and his superior was not me but a white in another department.

Q. Were there changes in the job descriptions of other people in administration that you are familiar with?

A. I can only speak directly to this, of my records of people who worked directly under me. Their job descriptions were changed. I can only testify specifically to that because that I know.

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BY MR. LUCAS:

Q. Do you recall those questions?

A. Yes.

At every point, what did you do about it, did you do anything about this, if you knew about this, and I'm happy for the opportunity to say, first of all, you remember we have mentioned this, it's been information which we have tried to

state that blacks have to, in order to survive, have to learn how to sometimes live with situations which we know are wrong, and we had to object at the proper time at the proper place, and sort of catalogue this and, say, later I'll do this.

Let me give you some specific examples. You mentioned my conversation input with Bagwell. Several times that I was a teacher, I was asked several questions. I knew I had no final decision-making part in this, they were just trying to get input. When I was challenged concerning these schools' location and so forth, that was just input and so forth.

Now, let me be more specific, and to show you what I mean as far as learning how to adopt and to suggest, there was a situation when I was assistant superintendent when an action that I was not a party to, I didn't have any decision-making powers in that, and suddenly when it was being presented and acted on, I knew from being a black, I knew from having been a witness in the court what the Court was saying, we had nothing to gain in anything that was segregative, and they were — I was involved in this action, and as soon as it hit me, I had to rise and object to it.

There was a letter of reprimand in my folder now for speaking out for things which we believe, what we want for our children, and there is a — there would have been a — as far as administrative powers, we could have had another session where we talked about it, I grant them that, but I wasn't given the privilege of being involved in that session. So, yes, I speak up.

Q. Did this have to do with the Court order?

A. Yes, the impetus, yes.

Q. Can you give us approximately when this was?

A. It had to be 1973.

THE COURT: 19 what?

THE WITNESS: '73.

Q. Before you left the system did you make it the concern and point out the pattern of segregation that you were observing in the Central Office to the superintendent?

A. Yes, I was a systems man in spite of everything. I would not even think of expressing these concerns other places before I expressed them to my superior. I did it in a letter to him, indicating the same things, and I also, in the letter, said, soon, superintendent, I will no longer be an employee of the Board of Education, but I'm a citizen of Dayton. I have a responsibility, I think, to call the attention of the appropriate people to what I see as resegregative acts in our schools.

Q. But you did bring it then to the attention of the superintendent?

A. Yes.

Q. John Maxwell; is that correct?

A. Yes, that's correct.

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[R. IV. 535-539, Vol. 4] Q. Mr. Harewood, did you make a recommendation to the Dayton Board of Education and other members of the staff with reference to programming so far as it affected desegregation and can you give us the point in time when you made those recommendations?

A. 1973 and the years preceding that. For the three years I was assistant superintendent there was continuous discussions as to what type of programs would be effective that we could institute in our schools to address the problem of desegregation of pupils and also integration of them because the programs would be of such manner. I remember specifically that there was in the Patterson Cooperative High School a very popular program, and it suddenly outgrew the ability for that school to maintain that program, and the question was where should it be placed, in what high school. Should it be placed as part of that program so that it would still maintain its uniqueness, its ability to attract pupils and its ability to have the students spend two years in the school and in a classroom and then learn in industry along with the school program in order to complete their high school

education, and always our thought was, wouldn't it be an excellent opportunity to place part of that school on the west side of town and the rest of it down where it is so that it would be a natural desegregative process by the school itself.

In 1973 I was surprised and in 1974 I was surprised to learn that that program was placed on the east side of town, which is already white, already segregated too, and there had been a natural – in a school that was not any older than some of the schools in the west side, in which the program was discontinued, and subsequent to that there was another extra program placed further east at Kiser High School, a very attractive program which would by natural process of the students involved in this – you could have natural integration without the necessity of these other ways of doing it, which, of course, had to be imposed on us. Yes, I did at every opportunity.

Q. Did you recommend programs such as the Kiser program be located on the west side for a desegregative purpose?

A. Part of it, yes, part of the reason for that and for facilities and other things, yes.

Q. All right. And the decision, I take it, was made to place them on the east side in white areas; is that correct?

A. Yes.

Q. All right. Go ahead. I'm sorry. I didn't mean to – were you finished?

A. Which means then that the burden of proof is on the blacks to move there and for the whites to stay where they were.

Q. Has there been in Dayton during your experience as an administrator in the system and as a teacher, a pattern of resistance on the part of whites to attending schools in west Dayton which were black?

A. Yes.

Q. Has there been an influence or any influence on the actions or recommendations of administrators in the Dayton

system which took into account a desire to avoid sending whites into west Dayton?

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A. Repeat the question so I can follow it.

Q. Has there been an influence on the actions, on the recommendations of school administrators in regard to a variety of school policies that took into account or had built into it a reluctance to assign whites into west Dayton?

A. Yes.

Q. When you left or retired from the Dayton Public Schools, you did so voluntarily; is that so?

A. Yes.

Q. And you have remained a strong supporter of public education?

A. Yes.

Q. And at the present time are you active, sir, in community life?

A. Yes.

Q. And do you serve on a variety of organizations?

A. Yes.

Q. Can you give us some of those?

A. I'm president of the Senior Citizens Advisory Board. I'm secretary of the Boys Club, Board of Trustees. I'm a member of the Board of Trustees of the Red Cross in several communities for them. I'm on the Health Foundation of United Way, a member of that board, and I'm on the board for Family Children Services, a member of that board.

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[R. IV. 539, Vol. 4] Q. Mr. Harewood, you've recently or just testified about some programs that you discussed that were attractive programs that you felt would have drawing power to bring students together regardless of their race; isn't that right?

A. Yes.

Q. And I take it you are a believer and advocate of the magnet concept of attractive programs that will accomplish that end?

A. Yes, in the broad sense of magnet, appealing programs. See, I have to come from a different position because I think when they use magnet – every school should be a magnet as far as attracting youngsters there because of what happens with that school. So I do, but I do say that if the Board, administrative staff – and may I say this question came up before, and I hesitated not to get the answer which I think your Honor was asking for. On every board, on every administrative staff there must be someone who is a dreamer, who is not satisfied with the • • •

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[R. IV. 545-549, Vol. 4] Q. At any rate, there are two executive directors, Mr. Stolle and Mr. Scott, one of whom is white and one of whom is black, and those gentlemen report to both Mr. Feuer and Mr. Harrison, the black and white assistant assistant superintendents; isn't that your understanding?

A. They report to both of them?

Q. Yes.

A. That's an impossible administrative organizational structure.

Q. I'm not asking whether you agree with the organizational structure or not. I'm asking if that isn't the way it is to your knowledge.

A. That's right, yes.

Q. Okay. Now, you have made it abundantly clear in your testimony that you are in violent disagreement – well, let me not use the word violent. You have made it clear that you are opposed to what the School Board's policy has been of building schools where children are or where they are expected to be?

A. Yes, if that's the only criteria, yes.

Q. And you've given us three examples. The first was Miami-Chapel School. When it was built you were opposed to that site; correct?

A. Yes.

Q. And as far as Miami-Chapel is concerned, you didn't suggest any alternate site; did you?

A. No.

Q. And as far as that building was concerned, the schools that it relieved were crowded at the time it was built; isn't that true?

A. That's right.

Q. And a school was needed to take care of that overcrowding?

A. Um-hum.

Q. That's an affirmative? True?

A. Yes.

Q. And the school was placed in an area where it was needed to accommodate students or pupils that were residents of that area; isn't that true?

A. Yes.

Q. And, of course, the DeSoto-Bass housing project was already there for some years, in fact, before Miami-Chapel school was built; wasn't it?

A. Yes.

Q. Now, if we move to Jefferson Primary School, there you did suggest an alternative to where they placed the school; didn't you?

A. I didn't really make that suggestion. These were the sites they were discussing, and I wanted one which I thought would be the best at that time.

Q. And the Princeton Park site that you recommended was a site that was in essentially a white area; wasn't it?

A. At that time, yes.

Q. And at that time Jefferson School was located in a mixed area so that it was achieving a mixed student population; correct?

A. Um-hum.

Q. And if a boundary line had been drawn between the existing Jefferson Primary or Jefferson Elementary, I guess it was, and the Princeton Park site and you drew a higher boundary line between those two, you would end up with turning the old Jefferson into a predominantly black school and New Princeton Park into a predominantly white school, wouldn't you, unless you moved classes back and forth between the two?

A. Not necessarily classes, but I don't see the boundaries as being that important to what we're trying to do, and I don't see the original structure of the schools as far as K to 8 being concerned with consistent to what we are talking about in reference to that. There could have been another arrangement of grades to facilitate the thing, yes.

Q. But what the Board chose to do was to build a school that preserved the same grade structure they were using everywhere else and also preserve the racial mix of students that had been attending that school at that time; isn't that right?

A. At that time, yes.

Q. And the alternatives in all these respects were essentially to move students from wherever they were located to some other part of town; isn't that true?

A. The decision — I don't follow you. The decision that was made was to move students from where they were to some other part of town?

Q. No. What I'm asking you is: The alternative to the policy of building these schools or additions where the children were would have been to transport them to some other part of town in order to achieve an economic or racial mix or both?

A. Yes, and that's happened in some of the sites which were built.

Q. Now, if we look to the percentages of minority students in various schools in the Dayton System, as the school years go by from the mid-fifties on, what we see is a pattern in any number of schools where they started out with a relatively

small percentage of black students, and as the years went by ended up with an increasingly large percentage of black students; isn't that true?

A. In some mixed schools, yes.

Q. And except for schools that started out as predominantly black or predominantly white and remained the same, that is the only pattern that is really observable from the percentages in the Dayton schools, is some getting increasingly black over the years; isn't it?

A. The way it is set up, yes.

Q. And, of course, as the years went by and these schools were located, the black population of the City of Dayton or at least the black student population of the Dayton School District has risen from 19 to what, 54 percent now?

A. 54, yes.

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